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Making South Dakota History: An Introduction to the Special Impeachment Issue

Hannah Haksgaard

Tyler Moore

Gabrielle Unruh

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MAKING SOUTH DAKOTA HISTORY: AN INTRODUCTION TO THE SPECIAL IMPEACHMENT ISSUE

HANNAH HAKSGAARD,[†] TYLER MOORE,^{††} & GABRIELLE UNRUH^{†††}

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I. INTRODUCTION

In September 2020, South Dakota’s Attorney General Jason Ravensborg was driving on a rural highway when he struck and killed a pedestrian, Joseph Boever.¹ After pleading guilty to two criminal misdemeanors, Ravensborg was impeached, convicted, removed from state office, and barred from holding it again. This was

Copyright © 2023. All rights reserved by Hannah Haksgaard, Tyler Moore, Gabrielle Unruh, and the *South Dakota Law Review*.

[†] Professor of Law, University of South Dakota Knudson School of Law. Faculty Advisor to the *South Dakota Law Review*. Two *South Dakota Law Review* students are entitled to my gratitude for making this introduction and special issue happen. I thank Andrew Falcone for his assistance with research for this introduction and for being the first to dig into the record for citations. I thank Gabrielle Unruh for not only co-authoring this introduction, but also swiftly and masterfully preparing the ten accompanying essays for publication. Finally, I must thank several colleagues for their help: Professor Patrick Garry for consulting on South Dakota constitutional history; Professor Tom Simmons for lending some of his personal book collection regarding early South Dakota history; Professor Gregory H. Shill for providing suggestions; Jesse Haksgaard for the tip on Stephen King; and Librarians Sarah Kammer and Courtney Segota for research assistance.

^{††} Assistant Professor of Law, University of South Dakota Knudson School of Law. In addition to those already recognized above, I would like to add my thanks to Turner Blasius, who conducted valuable research on early state constitutional impeachment provisions.

^{†††} J.D. 2023, University of South Dakota Knudson School of Law. Editor-in-Chief of Volume 68 of the *South Dakota Law Review*.

1. Hunter Dunteman, *Timeline: How Did a Fatal Crash Evolve into South Dakota’s Historic Impeachment of Jason Ravensborg?*, MITCHELL REPUBLIC (Apr. 30, 2022, 9:00 AM), <https://perma.cc/J6XR-NTHU>.

South Dakota's first impeachment of a constitutional officer.² It is also a rare instance where an officer was impeached despite his party's overwhelming control of both houses in the legislature.³

To chronicle this historic first, the *South Dakota Law Review* is publishing this special issue containing ten essays authored by those directly involved with the impeachment. These essays contain first-hand accounts of the proceedings, add important context to the legislative record, and provide lessons and analysis that may be useful if and when the next impeachment occurs.

This essay introduces the special issue by describing the factual and procedural background for Ravensborg's impeachment, providing a brief summary of each author's contribution, and offering several reflections on the broader importance of South Dakota's first impeachment. Part II outlines the events that transpired before, during, and after Ravensborg's vehicle struck and killed Joseph Boever. Part III discusses the basic contours and historical background of the South Dakota Constitution's impeachment provision. Part IV introduces the ten essays in this issue, charts the procedural history of the Ravensborg impeachment, and explains the part each author in this special issue played in the process. Part

2. H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 33 (S.D. 2022), <https://perma.cc/YGP4-A87C>; Transcript of Proceedings at 266-69, 277-88, *In re* Impeachment of Attorney General Jason Ravensborg, 96th Legis., Spec. Sess. 266-69, 277-88 (June 21, 2022), <https://perma.cc/CAU6-3Z9A>.

3. Impeachment of a politician by their own party is rare, but not unheard of. Several examples exist: Democrat Rod Blagojevich was the Governor of Illinois when he was impeached and convicted in 2009 at a time when the Democratic party held the majority of both legislative houses. Ewen MacAskill, *Illinois House Votes to Impeach Governor Rod Blagojevich*, THE GUARDIAN (Jan. 9, 2009, 11:50 AM), <https://perma.cc/873X-UPZP>; Ray Long & Rick Pearson, *Impeached Illinois Gov. Rod Blagojevich Has Been Removed from Office*, CHI. TRIB. (Jan. 30, 2009, 2:00 AM), <https://perma.cc/K5U2-8CGG>; *Illinois Party Control: 1992-2023*, BALLOTPEdia, <https://perma.cc/46V6-PLAF> (last visited Jan. 31, 2023). Republican Kathy Augustine was serving as the Nevada State Controller when she was impeached in 2004. Geoff Dornan, *Assembly Votes to Impeach Controller Kathy Augustine*, THE RECORD-COURIER (Nov. 11, 2004), <https://perma.cc/2EMR-SPZV>. Although Democrats held the majority in the state assembly, the vote to impeach was unanimous. *Id.*; Geoff Dornan, *Augustine Goes Back to Work Today Senate Concludes Impeachment Trial with Censure; Does Not Remove State Controller From Office*, TAHOE DAILY TRIB. (Dec. 5, 2004), <https://perma.cc/Z3N8-9N34>; *Nevada State Legislature*, BALLOTPEdia, <https://perma.cc/QT22-YC3X> (last visited Jan. 2023). Additionally, Republicans held the majority in the senate and acquitted her on two charges but convicted her on the third. Geoff Dornan, *Augustine Goes Back to Work Today Senate Concludes Impeachment Trial with Censure; Does Not Remove State Controller From Office*, TAHOE DAILY TRIB. (Dec. 5, 2004), <https://perma.cc/Z3N8-9N34>. Augustine was censured rather than removed from office. *Id.* Republican Evan Mecham was the Governor of Arizona when impeached in 1998 by a majority Republican house. Melissa Rigg & Susan R. Carson, *Mecham Convicted: Recall Status in Doubt Criminal Trial is Next for Ousted Governor*, ARIZ. DAILY STAR (Apr. 5, 1988), <https://perma.cc/Q4AS-PEC3>. *Arizona Party Control: 1992-2023*, BALLOTPEdia, <https://perma.cc/8GZ2-EA99> (last visited Jan. 2023). Republicans also had the majority in the Senate, where Mecham was convicted on two of the three articles and removed from office. Melissa Rigg & Susan R. Carson, *Mecham Convicted: Recall Status in Doubt Criminal Trial is Next for Ousted Governor*, ARIZ. DAILY STAR (Apr. 5, 1988), <https://perma.cc/Q4AS-PEC3>. *Arizona Party Control: 1992-2023*, BALLOTPEdia, <https://perma.cc/8GZ2-EA99> (last visited Jan. 2023). Democrat James Manchin was the State Treasurer of West Virginia when he was impeached by his own party 1989. Nick Musgrave, *The Manchin Political Dynasty Started with A. James Manchin—Pleasant Parody of a Politician*, EXPATLACHIANS, (Jun. 29, 2021), <https://perma.cc/3G4E-B6C5>. The House of Delegates brought seventeen articles of impeachment against him, and he resigned before the trial to convict began. *Id.* At the federal level, President Donald Trump's second impeachment set a record for same-party votes to impeach a president with 10 out of 211 Republicans in the House of Representatives voting to impeach President Trump. Domenico Montanaro, *These Are The 10 Republicans Who Voted to Impeach Trump*, NAT'L PUB. RADIO (Jan. 14, 2021, 5:01 AM), <https://perma.cc/X733-EVHH>.

V includes our reflections on choices made about the Ravensborg impeachment and their significance for South Dakota. South Dakota's first impeachment proceedings were merely the South Dakota Legislature's initial attempt to liquidate the meaning of the state's impeachment provision⁴—and several participants conceded they might not have done it right. These efforts nevertheless revealed much about South Dakota's constitution, its legislature, and what is necessary to protect South Dakotans from harm done by state officials.

II. THE OFFENSES

In fall 2020 when news broke of South Dakota's Attorney General killing a pedestrian, some South Dakotans were understandably shocked and concerned; others did not think too much of it. After all, South Dakota has some similar prior experience with high-level politicians causing death while driving vehicles on South Dakota highways. In 2003, then-Congressman and former-Governor William Janklow was convicted of manslaughter after killing a motorcyclist.⁵ Janklow, to his credit, resigned from office without much fuss.⁶ Ravensborg, however, took a different route, steadfastly defending his choice to remain in office even as pressure mounted to resign.⁷

The facts surrounding Ravensborg's case were more complicated and contested than in Janklow's. Ravensborg was driving at night on U.S. Highway 14, returning home from a political event, when he struck Boever,⁸ who was walking along the highway's shoulder holding a flashlight.⁹ Ravensborg apparently did not see Boever, or saw him too late, even though other drivers on the highway that evening had observed Boever and the illuminated flashlight.¹⁰ Ravensborg might have been distracted by his cellphone. A forensic report suggested he was not on his phone at the time of the incident but had used it a minute or two prior.¹¹ Districted driving, especially with smart phones, plays an

4. Cf. THE FEDERALIST NO. 37 (James Madison) ("All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications"); William Baude, *Constitutional Liquidation*, 71 STAN. L. REV. 1, 1 (2019) (suggesting Madisonian "liquidation" includes three elements: "textual indeterminacy," a "course of deliberate practice," and a resulting "constitutional settlement"). Clearly, a single experience does not amount to a course of practice or settlement.

5. See generally *South Dakota v. Janklow*, 2005 SD 25, 639 N.W.2d 685 (affirming the conviction of William Janklow for reckless driving and second-degree manslaughter).

6. *Rep. Janklow to Resign After Manslaughter Conviction*, NAT'L PUB. RADIO (Dec. 9, 2003, 12:00 AM), <https://perma.cc/WY4R-Y6J3>.

7. Jonathan Ellis & Joe Sneve, *Attorney General Spokesman: Ravensborg Won't Resign, Despite Articles of Impeachment*, ARGUS LEADER (Feb. 23, 2001, 12:01 PM), <https://perma.cc/2DRM-9HDN>; Zoë Richards, *Kristi Noem Ramps Up Pressure to Impeach South Dakota GOP Official Involved in Pedestrian's Death*, NBC NEWS (Mar. 29, 2022), <https://perma.cc/C44B-JG9C>.

8. Dunteman, *supra* note 1.

9. Transcript of Proceedings, *supra* note 2, at 14, 92.

10. *Id.* at 92.

11. *Id.* at 111, 118 (including testimony that the phone was in a locked position a minute or two prior to the incident).

increasing role in pedestrian deaths in the United States.¹² Even if Ravensborg was not using his phone, he acknowledged he was generally preoccupied with work as he drove home that evening.¹³

Ravnsborg's testimony about the incident contained multiple inconsistencies. He initially reported he was in the middle of the road at the time of the incident, but the evidence showed the impact occurred when he was on the shoulder—both sets of wheels having crossed over the rumble strips.¹⁴ Ravensborg also first said he was not sure what he hit,¹⁵ but then later said he thought he hit a deer.¹⁶ Certainly, confusion during a nighttime collision is understandable. Even hitting a deer at night on a rural highway can be a shocking,¹⁷ though common,¹⁸ experience.

What was less understandable—especially for many in the media, public, and legislature—was how Ravensborg could remain unaware that he had hit *a person* until the next morning.¹⁹ After the collision, Ravensborg drove for several hundred feet before pulling over.²⁰ He then called 911, identifying himself as the Attorney General.²¹ The Hyde County sheriff came to assist and loaned Ravensborg his personal vehicle, which Ravensborg drove home to Pierre that night, before returning to the scene the next morning.²² Only then—the next day—did Ravensborg find Boever's body in the ditch.²³ After the body was found, investigators joined the scene and Boever's glasses were found *inside* of Ravensborg's car.²⁴

One further problem was Ravensborg's apparent attempt to use his office to influence subsequent events. Ravensborg immediately identified himself to first responders as the Attorney General, which he had apparently done with previous incidents.²⁵ Later, he used official letterhead to issue a defensive public statement about the incident.²⁶ And finally, shortly before being interrogated during the

12. ANGIE SCHMITT, *RIGHT OF WAY: RACE, CLASS, AND THE SILENT EPIDEMIC OF PEDESTRIAN DEATHS IN AMERICAN* 10-12 (2020).

13. Transcript of Proceedings, *supra* note 2, at 253.

14. *Id.* at 62.

15. Dunteman, *supra* note 1.

16. Makenzie Huber, *Attorney General Says He Discovered Body Next Day After Returning to Crash Scene*, ARGUS LEADER (Sept. 14, 2020, 10:44 PM), <https://perma.cc/FGX3-9VNY>.

17. The sense of disorientation felt by a driver who strikes a living animal while driving on a rural road in the nighttime is reflected in Adrian Crowley's spoken poem "The Wild Boar." ADRIAN CROWLEY, *The Wild Boar, on SOME BLUE MORNING* (Chemikal Underground 2014) ("But then something happened. Suddenly a huge shape leapt from the forest to his right. There was barely enough time to react. He hit the brakes hard, but the car collided with the creature, or whatever it was.").

18. South Dakota is the third highest ranking state for animal collisions. *How Likely Are You to Have an Animal Collision?*, STATE FARM, <https://perma.cc/Y8ZU-PBEM> (last visited Jan. 11, 2023). One in fifty-one South Dakota drivers are involved in an animal-related insurance claim. *Id.*

19. Dunteman, *supra* note 1.

20. Transcript of Proceedings, *supra* note 2, at 67.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 15.

25. *Id.* at 270.

26. Huber, *supra* note 16.

ongoing investigation, Ravensborg privately asked agents from the Division of Criminal Investigations questions about cell phone and data in an apparent attempt to get a leg up.²⁷ During the Senate trial, Ravensborg's counsel downplayed this behavior, stating, "Imagine if the standard was untruths. We would see many, many, many more of these kinds of proceedings."²⁸

The essays in this special issue reflect a general discomfort with these "untruths" and the surrounding facts. Question marks rarely appear in legal writing, yet several authors express uneasiness by posing questions that remain unanswered. Others' feelings go beyond discomfort. Some authors believe Ravensborg knew what he hit. They point to the evidence—especially Boever's glasses in the back seat of the vehicle and Ravensborg's behavior and communications immediately after the incident—to suggest he was aware from the start he had likely killed someone.

Yet the law often requires more than mere likelihood. This is reflected in the decision State's Attorneys Emily Sovell and Michael Moore made to charge Ravensborg with three Class 2 misdemeanors: driving while using a cellphone, illegal lane change, and careless driving.²⁹ Many were perplexed as to why a second-degree manslaughter charge was not also added. Boever's family expressed concern that this amounted to preferential treatment.³⁰ But, as Sovell and Moore explained, manslaughter requires "recklessness," and they were not convinced this could be proven beyond a reasonable doubt.³¹ Ultimately, Ravensborg pled guilty to driving while using a cellphone and making an illegal lane change and was ordered to pay a \$1,000 fine.³²

Unsurprisingly, Ravensborg subsequently received pressure to resign.³³ Surprisingly, he steadfastly refused to do so.³⁴ Had Ravensborg simply stepped down like Janklow before him,³⁵ South Dakota likely would not have seen its first impeachment proceedings.³⁶ Instead, twenty-one months after causing Boever's

27. Transcript of Proceedings, *supra* note 2, at 250.

28. *Id.* at 232.

29. Complaint, *South Dakota v. Ravensborg*, No. MAG21-1, 2021 WL 651372 (S.D. 6th Cir. Feb. 17, 2021).

30. Neil Vigdor, *South Dakota Attorney General Charged with Careless Driving in Man's Death*, N.Y. TIMES (Feb. 18, 2021), <https://perma.cc/L2MJ-E4AU>.

31. H.R. SELECT COMM. ON INVESTIGATION, MINUTES, H.R. 96th Legis., 2d Spec. Sess., at 12-13 (S.D. 2022), <https://perma.cc/NP7K-S32X>.

32. Judgment of Conviction and Sentence, *Ravnsborg*, No. MAG21-1 (Sept. 2, 2021).

33. Christine Hauser, *South Dakota Attorney General Faces Impeachment and Calls to Resign Over Crash*, N.Y. TIMES (Feb. 24, 2021), <https://perma.cc/CVJ5-3MBV>.

34. Ellis & Sneve, *supra* note 7.

35. *Rep. Janklow to Resign After Manslaughter Conviction*, *supra* note 6.

36. Though this scenario would have raised another difficult constitutional question: whether an officer can be impeached after leaving office. This was of course a key dispute in Donald Trump's second impeachment trial in January 2021. See Nina Totenberg, *Can the Senate Try an Ex-President?*, NAT'L PUB. RADIO (Jan. 18, 2021, 5:00 AM), <https://perma.cc/SQH9-SYCG>. Legal scholars remain split on the answer at the federal level. Compare Brian C. Kalt, *The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History, and Practice of Late Impeachment*, 6 TEX. REV. L. & POL'Y 13 (2001) (supporting late impeachment), with Michael W. McConnell, *Impeachment and Trial After Officials Leave Office*, 87 MO. L. REV. 793 (2022) (supporting late conviction if the officer

death, Ravensborg had been impeached, convicted, removed from office, and barred from holding it again.³⁷

III. IMPEACHMENT IN SOUTH DAKOTA

The South Dakota Constitution outlines the general framework for impeachment proceedings in Article XVI. Like most such provisions at the state and federal level,³⁸ South Dakota splits the process into two stages.³⁹ In the first, the House decides, based on a majority vote, whether to impeach the officer.⁴⁰ In the second, the Senate essentially serves as a jury and must convict by a two-thirds majority to remove the officer.⁴¹ Then another vote is held to bar the officer from holding future office.⁴²

Unlike the United States Constitution,⁴³ South Dakota's voting thresholds are based on the number of members *elected* instead of members *present*.⁴⁴ Only certain officials can be impeached: "The Governor and other state and judicial officers" are "liable to impeachment," while "county judges, justices of the peace and police magistrates" are not (but can be "removed" for comparatively lesser offenses).⁴⁵ South Dakota's grounds for impeachment include "drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office."⁴⁶ The state constitution also prohibits officers from exercising their duties between an impeachment and trial in the Senate.⁴⁷ Finally, it notes an officer cannot be made "liable to impeachment twice for the same offense,"⁴⁸ and that "whether convicted

was impeached while in office), with Phillip Bobbit, *Why the Senate Shouldn't Hold a Late Impeachment Trial*, LAWFARE (Jan. 27, 2021, 9:01 AM), <https://perma.cc/NA2C-X9Q8> (rejecting late impeachment).

37. H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 33 (S.D. 2022), <https://perma.cc/YGP4-A87C>; Transcript of Proceedings, *supra* note 2, at 266-69, 277-88.

38. See, e.g., U.S. CONST. art. I, § 2, cl. 5 ("The House of Representatives . . . shall have the sole Power of Impeachment."); *id.* § 3, cl. 6 ("The Senate shall have the sole Power to try all Impeachments.").

39. S.D. CONST. art. XVI, §§ 1-2.

40. *Id.* § 1.

41. *Id.* § 2.

42. *Id.* § 3 (noting that "judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state" and that "[t]he person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to law"). The separate vote taken in the Ravensborg case is discussed *infra* at Part V.D.

43. See, e.g., U.S. CONST. art. 1, § 3 ("no Person shall be convicted without the Concurrence of two thirds of the Members present").

44. S.D. CONST. art. XVI, §§ 1-2.

45. *Id.* §§ 3-4 (allowing removal, but not impeachment, for "gross incompetency"); see also State *ex rel.* Ayers v. Kipp, 74 N.W. 440 (1898) (discussing situations when the legislature might condition removal of certain types of state officers).

46. S.D. CONST. art. XVI, § 3.

47. *Id.* § 5. This provision is in line with other jurisdictions. See generally *Pendency of Impeachment Proceeding as Affecting Power of Officer*, 30 A.L.R. 1149 (1924) (noting that sources "generally hold that an officer, when impeached by the preferment of charges by the lower house of the legislative branch of the government, [but before] their presentation to the superior house or body thereof, is thereby suspended from office and from the performance or exercise of its duties").

48. S.D. CONST. art. XVI, § 8.

or acquitted,” the officer is subject “to indictment, trial, judgment and punishment according to law.”⁴⁹

There is little in the way of state judicial or historical precedent applying these provisions.⁵⁰ The only previous occasion on which the South Dakota Legislature considered impeachment was in 1917, when the House ultimately voted against impeaching Judge Levi McGee.⁵¹ Direct evidence of the impeachment provision’s original meaning is similarly lacking.⁵² South Dakota faced a slow path to statehood,⁵³ and there were several constitutional conventions before South Dakota became a state in 1889. As Professor Patrick Garry has summarized, most of the drafting at both the 1885 and 1889 conventions was accomplished at the committee level, and almost none of this was preserved.⁵⁴ Additionally, many issues debated at the full convention level passed with little comment, either because they involved provisions that were adopted from another state’s constitution⁵⁵ or because of the delegates’ “great deference to the work of committees.”⁵⁶

Even so, a few historical observations can provide some context. As to the grounds provided for impeachment, corruption was a significant concern in the Dakota Territory during the 1880s. Had it already received statehood, South Dakota’s first impeachment might well have been of territorial Governor Nehemiah Ordway, whose close ties to the railroad, alleged sales of public offices, and involvement in the disreputable transfer of the capital from Yankton to Bismarck led to his being called “the most corrupt and unprincipled m[a]n that has ever disgraced and degraded the public service of this country.”⁵⁷ Eventually,

49. *Id.* § 3.

50. *But see Ayers*, 74 N.W. at 442 (discussing the categories of officers that must be impeached pursuant to S.D. CONST. art. XVI, §§ 3-4). Another tangentially related precedent cited by the Majority Report of the House Select Committee on Investigation, see H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/7Z4Z-C244>, is *State ex rel. Steffen v. Peterson*, 2000 SD 39, 607 N.W.2d 262, where the South Dakota Supreme Court addressed “malfeasance” while reviewing a state trial judge’s decision to remove an officer under South Dakota Codified Law section 3-17-6 for abuse of discretion.

51. Seth Tupper & Joshua Haiar, *No, This Isn’t South Dakota’s First Impeachment Process*, S.D. PUB. BROAD. (Feb. 10, 2022, 7:24 AM), <https://perma.cc/VW6F-2GS4>.

52. *But see* discussion *infra* Part V.B (addressing excerpt from the 1885 constitutional convention debate connecting the House’s role in impeachment with indictment).

53. *See generally* PATRICK M. GARRY, *THE SOUTH DAKOTA STATE CONSTITUTION* 4-11 (2014) (explaining difficulties and delays in South Dakota achieving statehood).

54. *See id.*; Catherine Lucie Zumpano Chicoine & Patrick M. Garry, *The 1885 and 1889 Constitutional Convention Debates*, 59 S.D. L. REV. 179, 179-80 (2014).

55. GARRY, *supra* note 53, at 27 (noting that South Dakota delegates frequently cited the “Illinois, Pennsylvania, New York, Wisconsin, Minnesota, and California” constitutions as examples).

56. Chicoine & Garry, *supra* note 54, at 180.

57. *See* GARRY, *supra* note 53, at 7 n.33, 19 (quoting Congressional delegate, political opponent, and, later, one of South Dakota’s first U.S. Senators Richard F. Pettigrew). For a more charitable account of Ordway and his administration, see HERBERT S. SCHELL, *HISTORY OF SOUTH DAKOTA* 203-14 (4th ed. 2004) (suggesting, for example, that “many writers have exaggerated” the details of the transfer of the capital from Yankton to Bismarck “in the effort to cast [Ordway] in [a] villainous role[]”). *But see* HOWARD ROBERTS LAMAR, *DAKOTA TERRITORY 1861-89: A STUDY OF FRONTIER POLITICS* 241 (David Horne ed., 1956) (“The conclusion is inescapable that Ordway was one of the most corrupt officials ever to appear in Dakota.”); JON LAUCK, *PRAIRIE REPUBLIC* 94 (2010) (claiming that Ordway “bribed legislators, threatened vetoes of legislators’ bills if they resisted his plans, compelled settlers seeking

Ordway was indicted by a Yankton grand jury for corrupt practices, including the acceptance of a bribe, and removed from his post.⁵⁸ Ordway's continued political opposition to the admission of both a southern and northern Dakota after this ironically helped solidify the movement in favor of creating two states.⁵⁹ Convention delegates would have had this experience fresh in their minds when they included "corrupt conduct" as a ground for impeachment.⁶⁰

Drunkness is another noteworthy ground for impeachment. When South Dakota ratified its constitution, it became one of a few states to explicitly list this ground.⁶¹ Even with multiple constitutional conventions leading up to South Dakota statehood, little survives in the historical record about why the unique ground of "drunkness" was included. The 1883 constitutional convention held in Sioux Falls adopted an impeachment provision *without* the ground of drunkness.⁶² Then the 1885 constitutional convention adopted an impeachment provision *with* the ground of drunkness,⁶³ but no explanation for that choice survives.⁶⁴ In 1889, the final constitutional convention for South Dakota

county seats to give him land, installed his son as territorial auditor in order to control finances, and moved the territorial capital from Yankton to Bismarck in order to benefit from real estate speculation.".)

58. See SCHELL, *supra* note 57, at 214. Schell notes that a judge quashed Ordway's indictment on the grounds that, as a territorial governor, he could be tried only by way of impeachment. But this never materialized before his removal by President Chester Arthur. *Id.*

59. GARRY, *supra* note 53, at 19-20.

60. S.D. CONST. art. XVI, § 3.

61. Compare S.D. CONST. art. XVI, § 3 ("drunkness"), with N.D. CONST. art. XI, § 10 ("habitual drunkenness"). Both South Dakota and North Dakota have retained their original drunkenness provisions into the modern day, but not all states have. For example, Alabama's 1875 constitution provided impeachment for "habitual drunkenness." ALA. CONST. of 1875 art. VII, § 1, <https://digital.archives.alabama.gov/digital/collection/constitutions/id/51>; see also State *ex rel.* Atty. Gen. v. Savage, 7 So. 183 (Ala. 1890) (interpreting the "habitual drunkenness" impeachment provision of the Alabama Constitution of 1875). However, Alabama's current constitution provides impeachment for "intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith[.]" ALA. CONST. art. VII, § 173.

62. The 1883 constitution is printed in I DAKOTA CONSTITUTIONAL CONVENTION 9-44 (1907). The impeachment grounds adopted in 1883 were "corrupt conduct, or malfeasance, or crimes, or misdemeanors in office." *Id.* at 37. Unfortunately, no explanation survives for that choice. The 1883 debates are printed in Journal of the Constitutional Convention of That Part of Dakota South of the Forty-Sixth Parallel of Latitude (Sept. 1883), in XXI SOUTH DAKOTA HISTORICAL COLLECTIONS 291-467 (State Historical Society ed., 1942) [hereinafter XXI SOUTH DAKOTA HISTORICAL COLLECTIONS]. On the morning of the seventh day of the convention, a committee recommendation was presented providing impeachment could proceed for "corrupt conduct, for malfeasance, or crimes or misdemeanors in office." *Id.* at 343-44; see also Chief Justice David Gilbertson & David S. Barari, *Indexing the South Dakota Constitutional Conventions: A 21st Century Solution to a 125 Year Old Problem*, 53 S.D. L. REV. 260, 279 (2008) (showing on their index the impeachment content).

63. The 1885 convention is printed in PRESENTATION OF DAKOTA'S CLAIMS, AND MEMORIAL PRAYING FOR ADMISSION. THE CONSTITUTION ADOPTED BY THE CONVENTION 22-62 (1885), <https://archive.org/details/presentationofda00sout/page/n3/mode/2up?view=theater>. This proposed constitution allowed "impeachment for drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office." *Id.* at 45.

64. The 1885 convention's records are limited. I DAKOTA CONSTITUTIONAL CONVENTION, *supra* note 62, at 48 ("Misfortunately, the files of the convention of 1885 have been lost, so that the papers and resolutions generally discussed there cannot be presented, and without them the debate is sometimes rather ambiguous."). While the recorded debates show the adoption of an impeachment provision, the grounds for impeachment do not even appear and no explanation is provided why drunkenness was included. *Id.*

occurred,⁶⁵ and that constitution kept the same language on drunkenness that had been adopted in 1885.⁶⁶

The explanation for including drunkenness might owe, in part, to the rise of the temperance movement in the 1880s.⁶⁷ Temperance was often coupled with support for women's suffrage⁶⁸ during this period in South Dakota.⁶⁹ Both causes occasioned significant debate during South Dakota's constitutional conventions⁷⁰

at 582-83; *see also id.* at 101 (noting resolution to appoint a committee on impeachment and removal from office).

65. The 1889 debates are printed in II DAKOTA CONSTITUTIONAL CONVENTION (1907). Although references to the impeachment provision appear several times, there is no recorded debate on what grounds to include. *Id.* at 76-77 (sending the impeachment provisions to committee); *id.* at 166-67 (providing the impeachment provision brought from committee); *id.* at 170 (recording the vote to adopt "the report of the Committee on Impeachment and Removal from Office"). It is unsurprising that the language stayed the same because the 1889 convention "was charged with amending and resubmitting the Constitution of 1885." Patrick Garry & Candice Spurlin, *History of the 1889 South Dakota Constitution*, 59 S.D. L. REV. 14, 18 (2014). There was also a convention in 1887 that proposed one state for all of Dakota. Gilbertson & Barari, *supra* note 62, at 314. What recorded documentation has survived is printed in XXI SOUTH DAKOTA HISTORICAL COLLECTIONS, *supra* note 62, at 468-513. However, there is no information included about the impeachment ground of drunkenness.

66. The 1889 constitution is available online at *Constitution of South Dakota, 1889*, S.D. STATE LIBR., https://sdsdl-montage.auto-graphics.com/#/item-details/entities_9697?from=search-results (last visited Feb. 9, 2023).

67. In particular, Frances Willard's Women's Christian Temperance Union ("WTCU") played an important role in the temperance movement of the 1880s. *See generally* CHRISTOPHER H. EVANS, DO EVERYTHING: THE BIOGRAPHY OF FRANCES WILLARD (2022) (discussing the Willard's influence on the WCTU and its growing influence in the 1880s); *see also* ERIC BURNS, THE SPIRITS OF AMERICA: A SOCIAL HISTORY OF ALCOHOL 121 (2004) (describing Willard's impact and the WTCU's success in getting three-fourths of states to pass some kind of law limiting the manufacture or sale of alcohol). In the Dakota Territory in the 1880s, the WTCU was active in advocating for women's suffrage. Molly P. Rozum & Lori Ann Lahlum, *Introduction "We Will Never Halt Till the Prize is Won": Suffrage on the Northern Great Plains*, in EQUALITY AT THE BALLOT BOX: VOTES FOR WOMEN ON THE NORTHERN GREAT PLAINS 6-7 (Lori Ann Lahlum & Molly P. Rozum eds., 2019).

68. The women here did not include Native American women, who were generally excluded from this movement. *See generally* Molly P. Rozum, *Citizenship, Civilization, and Property: The 1890 South Dakota Vote on Woman Suffrage and Indian Suffrage*, in EQUALITY AT THE BALLOT BOX: VOTES FOR WOMEN ON THE NORTHERN GREAT PLAINS 240-63 (Lori Ann Lahlum & Molly P. Rozum eds., 2019) (discussing the divide in support for women's suffrage and Native American suffrage).

69. *See* Frank Van Nuys, *Immigrants and Politics in South Dakota, 1861-1930*, in THE PLAINS POLITICAL TRADITION: ESSAYS ON SOUTH DAKOTA POLITICAL CULTURE 52-53 (Jon K. Lauck et al. eds., 2011) (discussing how "The Franchise Department of the Women's Christian Temperance Union [in South Dakota] was one of the earliest organized forces behind the suffrage campaign" and that "the liquor industry led the antisuffrage cause"); *see also* Sara Egge, *Ethnicity and Woman Suffrage on the South Dakota Plains*, in EQUALITY AT THE BALLOT BOX: VOTES FOR WOMEN ON THE NORTHERN GREAT PLAINS 218 (Lori Ann Lahlum & Molly P. Rozum eds., 2019) ("Most South Dakotans associated temperance with woman suffrage[.]"); Paula M. Nelson, *Home and Family First: Women and Political Culture*, in THE PLAINS POLITICAL TRADITION: ESSAYS ON SOUTH DAKOTA POLITICAL CULTURE 142-43 (Jon K. Lauck et al. eds., 2011) (noting the connection between suffrage and temperance was so strong in South Dakota that it frustrated national suffrage leaders who thought this undermined their chances in the state); LAUCK, *supra* note 57, at 101-02 (also noting the connection); EVANS, *supra* note 67, at 206-14 (discussing the broader alliance between Willard and suffrage). Relatedly, anti-prohibition forces "feared women's prohibitionist tendencies" and therefore opposed women's suffrage. Paula M. Nelson, *Defending Separate Spheres: Anti-Suffrage Women in South Dakota Suffrage Campaigns*, in EQUALITY AT THE BALLOT BOX: VOTES FOR WOMEN ON THE NORTHERN GREAT PLAINS 137 (Lori Ann Lahlum & Molly P. Rozum eds., 2019).

70. Garry & Spurlin, *supra* note 65, at 22-23, 28.

but were sidelined because of concerns they might jeopardize Congressional approval of South Dakota's statehood.⁷¹

Prior events at the federal level also provided support for drunkenness as a ground for impeachment. By the time South Dakota was admitted to the Union, there had been only two federal impeachment convictions, one of which involved drunkenness.⁷² Specifically, Judge John Pickering, a federal district judge in New Hampshire, was impeached in 1803 and convicted in 1804 for various actions including "conducting court while intoxicated."⁷³ Allegations of alcohol abuse were also involved in the 1868 impeachment of President Andrew Johnson, which narrowly failed in the Senate.⁷⁴ Although the articles of impeachment against Johnson did not specifically mention it,⁷⁵ there were "repeated characterizations of him as a drunkard."⁷⁶ Finally, in 1873, the House of Representatives impeached Kansas Federal District Judge Mark Delahay because "his personal habits unfitted him for the judicial office" due to being "intoxicated off the bench as well as on the bench," even when "sentenc[ing] prisoners."⁷⁷ Delahay resigned before his Senate trial.⁷⁸

There are surely other insights about South Dakota's impeachment provision to be gained from the historical sources. However, considering the scarcity of South Dakota-specific evidence and high level of generality at which the state's impeachment provision is framed, many more answers await resolution by patterns of practice in the legislature. One reason the Ravnsborg impeachment was particularly important for South Dakotans, therefore, was that it was the first clear opportunity to do just that. The authors who contributed to this special

71. Rozum & Lahlum, *supra* note 67, at 1 ("Opponents of woman suffrage throughout the region, and even some supporters, warned that including it in the new state constitutions could give Congress a reason not to admit the petitioning states or offer votes a reason to reject the constitution."); *see also* LAUCK, *supra* note 57, at 101 (calling prohibition and women's suffrage "[t]he most potentially divisive issues addressed during the conventions"). The prohibition issue was eventually separated from constitutional ratification and passed by referendum in 1889. Garry & Spurlin, *supra* note 65, at 32. Prohibition was then repealed in 1897 and reinstated in 1916. SCHELL, *supra* note 57, at 238, 266. Suffrage took a different path, enduring a string of defeats until 1919 when the state ratified the Nineteenth Amendment. *Id.* at 268.

72. Sam J. Ervin Jr., *Separation of Powers: Judicial Independence*, 35 L. & CONTEMP. PROBS. 108, 119 n.48 (1970) (listing federal impeachments). The other conviction was Judge West H. Humphries of the District Court for the District of Tennessee, who was impeached and convicted in 1862 for actions taken on behalf of the Confederate cause. *Id.*; Bethel B. Kelley & Daniel G. Wyllie, *The Congressional Impeachment Power as It Relates to the Federal Judiciary*, 46 NOTRE DAME L. 678, 679 (1971).

73. Kelley & Wyllie, *supra* note 72, at 678, 692; Ervin, *supra* note 72, at 118-19.

74. Wesley M. Oliver, *The Search for Precedent in the Andrew Johnson Impeachment*, 39 QUINNIPIAC L. REV. 107, 120 (2020).

75. *See id.* at 122-23 (listing articles of impeachment).

76. H. H. Walker Lewis, *The Impeachment of Andrew Johnson: A Political Tragedy*, 40 A.B.A. J. 15, 16 (1954). Those characterizations were likely false. *Id.* Although Johnson's "inaugural speech was so alcoholic that Senator Sumner ostentatiously buried his face in his hands," it might have been a one-time ordeal. *Id.* In fact, "[m]any prominent persons closely associated with Johnson have attested to the fact that he was a man of temperate habits but his 'slip,' as Lincoln called it, gave credence to the later repeated characterizations of him as a drunkard." *Id.*; *see also* Feather Schwartz Foster, *Andrew Johnson and Strong Drink*, PRESIDENTIAL HIST. BLOG (Nov. 12, 2018), <https://perma.cc/MNZ3-8YQ8>.

77. 3 HINDS, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES 1008 (1907).

78. MICHAEL J. GERHARDT, IMPEACHMENT: WHAT EVERYONE NEEDS TO KNOW 202 (2018).

issue—all of whom participated in the legislative impeachment process—essentially began the process of filling in the details for how future impeachments will be conducted in the state.

IV. THE ESSAYS IN CONTEXT OF THE PROCEEDINGS

The ten essays included in this special issue of the *South Dakota Law Review* cover each step of the impeachment process. Dean Neil Fulton of the University of South Dakota Knudson School of Law originated the idea for this special issue and created the list of authors to invite. In addition to the twelve authors who did contribute essays to this issue, Mr. Ravensborg and his attorney were invited to contribute but declined to do so.

The first essay is authored by Reed Holwegner, Justin Goetz, and John McCullough, staff at the Legislative Research Council. Their essay provides important technical information about the scheduling of the special session and time limits faced by the House and Senate. In South Dakota, the Legislative Research Council plays an important role in advising and assisting our citizen legislators. The Legislative Research Council staff frequently draft bills, edit language, and generally support legislators.⁷⁹ Their role in the impeachment process was no different, and several legislators who drafted essays acknowledge the important role played by the Legislative Research Council.

The next four essays offer perspectives on proceedings in the House. Representative Will Mortenson, a lawyer from Fort Pierre whose district included the land where the incident occurred,⁸⁰ drafted and introduced the articles of impeachment in the House.⁸¹ Representative Mortenson, a Republican, was, at the time, mere weeks into his first legislative term.⁸² His essay reflects on his process and the grave nature of these proceedings and outcomes. Mortenson also explains how he settled on the two articles of impeachment: (1) “crimes causing the death of Boever;” and (2) “malfeasance in office following the death of Boever.”⁸³

79. See *South Dakota Legislative Research Council*, BALLOTPEDIA, <https://perma.cc/TRM4-HY46> (last visited Jan. 11, 2023).

80. *Representative Will Mortenson – 2022*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/G2AD-H84B> (last visited Jan. 14, 2023) (indicating Mortenson represents Hughes, Hyde, Stanley, and Sully Counties).

81. H. JOURNAL, 96th Legis., Reg. Sess., Twenty-Seventh Day 381 (S.D. 2021), <https://perma.cc/57BG-DH3Q>.

82. *Will Mortenson*, BALLOTPEDIA, <https://perma.cc/Y5LC-BS5Q> (last visited Jan. 11, 2023). Mortenson stepped into the fray by introducing the articles of impeachment early in his freshman term, and he hasn't slowed down since. In November 2022, Mortenson was selected to serve as the majority leader during his second term. Tony Venhuizen, *SD House Republicans Pick Leadership Team*, SODAK GOVERNORS (Nov. 19, 2022), <https://perma.cc/XNZ6-K395>. Mortenson made history with this appointment: “A member of the Cheyenne River Sioux Tribe, [Mortenson] is the first tribal member in state history to serve as majority leader in either house, or to lead a Republican caucus. He is also the youngest Republican caucus leader in state history.” *Id.*

83. H.R. Res. 7001, 96th Legis., Reg. Sess. (S.D. 2021), <https://perma.cc/FLU8-YYAG>.

After the articles of impeachment were read in February 2021, the House enacted a resolution in November creating the House Select Committee on Investigation (“Select Committee”),⁸⁴ and Speaker of the House Spencer Gosch appointed members to the Select Committee.⁸⁵ Two authors served on the Select Committee—Representatives Michael Stevens and Ryan Cwach, both lawyers from Yankton. Representative Stevens, a Republican, served as the Vice Chairman of the Committee.⁸⁶ Representative Cwach served on the committee as the only Democratic lawyer in the House and one of only eight total Democratic members of the House.⁸⁷ Another author, Sara Frankenstein, a lawyer from Rapid City, served as counsel to the Select Committee and ultimately wrote a substantial report for the majority.⁸⁸

The Select Committee split its vote on party lines. The six Republicans, including Representative Stevens, recommended against impeachment.⁸⁹ The two Democrats, one being Representative Cwach, voted in favor of impeachment.⁹⁰ Ms. Frankenstein’s essay reflects on her role in the Select Committee’s process and briefly summarizes the majority report she authored for the committee. Representative Stevens writes about the legal analysis done by the committee and his reasons for recommending against impeachment. Representative Cwach’s essay discusses the Select Committee’s meetings and the evidence presented therein, his reasons for recommending in favor of impeachment, and his drafting of the committee’s minority report.⁹¹

After the Select Committee issued its recommendations and reports, action moved to the House floor where the party line broke down. In a legislature dominated by Republicans, an impeachment would never be successful if the Republicans had simply voted in support of a Republican Attorney General. However, party affiliation did not govern. This was expected, in part, because Governor Kristi Noem, a Republican, had already made public statements in favor of impeachment.⁹²

84. H.R. Res. 7001, 96th Legis., 2d Spec. Sess. (S.D. 2021), <https://perma.cc/WZ94-SE6T>. The delay between February and November occurred because the House delayed its impeachment proceedings until the criminal case concluded. Ravensborg pleaded guilty in August and the judgment of conviction and sentence was entered in September. Jacey Fortin & Michael Levenson, *South Dakota Attorney General Avoids Jail Time for Fatal Crash*, N.Y. TIMES (Aug. 25, 2021), <https://perma.cc/LC5X-EQ99>.

85. See *House Select Committee on Investigation – 2021 Second Special Session*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/T2SF-7FP5> (last visited Nov. 16, 2022).

86. *Id.*

87. *House Legislators*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/F3WJ-5FB8> (last visited Dec. 23, 2022) (showing eight Democrats and sixty-two Republicans in the House in 2022).

88. H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/7Z4Z-C244>.

89. H.R. SELECT COMM. ON INVESTIGATION, MINUTES, H.R. 96th Legis., 2d Spec. Sess., at 2 (S.D. 2022), <https://perma.cc/C55G-G8PR>.

90. *Id.*

91. H.R. SELECT COMM. ON INVESTIGATION, MINORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/CM8X-UY82>.

92. Hauser, *supra* note 33. Billboards encouraging impeachment, and aimed at members of the Select Committee, were put up in Sioux Falls by a non-profit favoring Governor Noem’s agenda. Associated Press, *Billboards Name Ravensborg Impeachment Investigators*, U.S. NEWS (March 15, 2022),

On the floor of the House, only two legislators spoke: authors Mortenson and Cwach.⁹³ Mortenson argued that impeachment was proper on Article 1, committing crimes in office.⁹⁴ Then Cwach argued that impeachment was proper on Article 2, malfeasance in office.⁹⁵ Both authors discuss the significance of those speeches in their essays; it is clear that they appreciated the importance of the moment.⁹⁶ Despite the Select Committee's vote to recommend against impeachment, no one stood on the House floor in support of Ravnsborg.⁹⁷

Ultimately, the House voted to impeach on both articles: (1) "crimes causing the death of Joseph Boever;" and (2) "malfeasance in office following the death of Joseph Boever."⁹⁸ Representative Stevens voted against the motions, while Representatives Cwach and Mortenson voted in favor. Because the vote required a majority of members *elected*, absent members counted as a "no" vote. Thirty-six representatives voted to impeach; thirty-one were present and voted "no," and three others missed the vote—the final tally being thirty-six to impeach and thirty-four not. One more vote "no" would have prevented the impeachment.⁹⁹ Instead, this closely divided vote led to Attorney General Ravnsborg being the first constitutional officer to have ever been impeached in South Dakota.¹⁰⁰

The activity then moved to the Senate where it considered the two articles of impeachment focused on causing Boever's death and malfeasance in office following the incident.¹⁰¹ Three senators and the two prosecuting attorneys brought in for the impeachment trial wrote essays for this special issue.

Senator and President Pro Tempore Lee Schoenbeck played a critical role in drafting the rules of procedure that governed the Senate trial. He writes extensively about drafting the rules and the thought process behind them. Senator Schoenbeck's essay walks through important decisions, such as whether to include a standard of proof and whether to use the South Dakota Rules of Evidence. Senator Schoenbeck also discusses his decision to bring in Mark Vargo and Alexis Tracy to prosecute the impeachment trial before the Senate.

<https://www.usnews.com/news/best-states/south-dakota/articles/2022-03-15/billboards-name-ravnsborg-impeachment-investigators>. While Governor Noem denied being behind the billboards, she was not shy about advocating for impeachment. *Id.*; Hauser, *supra* note 33.

93. See H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 30-33 (S.D. 2022), <https://perma.cc/SP7U-QMLN>.

94. *Id.* at 30.

95. *Id.*

96. The author reflections about giving floor speeches in an impeachment proceeding strike us as being as thoughtful as what Former Senator Dale Bumpers wrote about his speech before the United States Senate during the impeachment trial of President Bill Clinton. DALE BUMPERS, *THE BEST LAWYER IN A ONE-LAWYER TOWN* 257-76 (2003).

97. See H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 30-33 (S.D. 2022), <https://perma.cc/SP7U-QMLN>.

98. H.R. Res. 7002, 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/69U7-MLUB>.

99. Representative Cwach's essay describes the tension in the moment that the vote was taken as he watched one representative toggle with the red (no) and green (yes) buttons, ultimately landing on green.

100. H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 33 (S.D. 2022), <https://perma.cc/SP7U-QMLN>; Dunteman, *supra* note 1.

101. See generally Transcript of Proceedings, *supra* note 2 (transcribing the Senate trial).

Vargo and Tracy worked together to prosecute in the Senate, and each contributed an essay about their experience. Vargo, the State's Attorney from Pennington County at the time of the Senate trial, was later appointed to the Attorney General role by Governor Noem the week after Ravensborg was removed from office.¹⁰² Vargo declined to run for the Attorney General position in the 2022 election and in 2023 returned to his role as State's Attorney in South Dakota's second-largest county.¹⁰³ Tracy, brought into a prosecutorial role at the impeachment trial by Vargo, was then serving as the Clay County State's Attorney.¹⁰⁴

Both Vargo and Tracy write about being contacted to prosecute Ravensborg and the differences between an impeachment trial and the ordinary court trials that the seasoned prosecutors are accustomed to. They write about their preparation, their process and strategy, and the significance of trying the state's chief prosecutor.¹⁰⁵ Tracy also focuses on the craft of presenting an opening statement in an impeachment trial.

The three senators who write about their perspective provide an explanation for their votes. Although each voted differently, it is clear that they gave serious and reasonable thought to their votes. Senator Schoenbeck voted to convict on both articles, writing about what he saw as “overwhelming evidence of guilt.” Senator Rusch discusses why he voted against conviction on the first article (causing the death) but voted for conviction on the second article (malfeasance in office). Senator Johns voted against conviction on both articles and was the sole dissenter on the second article. He explains his vote against the second article, wrestling with the meaning of “in office” and ultimately concluding that Ravensborg's conduct was not “in office.”

Several authors also mention previous personal and professional interactions with Ravensborg. Former Senator Rusch discusses Ravensborg appearing in his courtroom during his time as circuit judge. Sara Frankenstein mentions that Ravensborg was a law school classmate of hers.¹⁰⁶ This reveals another complicated dynamic of the proceedings—Ravnsborg was a friend, colleague, and

102. Austin Goss & Dakota News Now Staff, *Noem Appoints Vargo to Replace Ousted Ravensborg*, DAKOTA NEWS NOW (June 28, 2022), <https://perma.cc/N4E7-5XJH>.

103. *State's Attorney Office*, PENNINGTON CNTY. S.D., <https://perma.cc/H9VC-G9KP> (last visited Jan. 11, 2023).

104. *About the Office: Meet the State's Attorney*, CLAY CNTY. STATE'S ATT'Y, <https://perma.cc/N9LK-XWA7> (last visited Dec. 31, 2022). In March 2023, Alexis Tracy announced a move to the South Dakota Attorney General's office. David Lias, *Clay County State's Attorney Alexis Tracy to Join SD Attorney General's Office*, VERMILLION PLAIN TALK (Mar. 7, 2023), <https://perma.cc/GC9S-3HYJ>.

105. Because the South Dakota Constitution calls for the suspension of an impeached officer while awaiting trial in the Senate, Ravensborg was not technically acting as the state's chief prosecutor during the Senate trial. S.D. CONST. art. XVI, § 5; see also Mitch Smith, *South Dakota Lawmakers Impeach Attorney General Involved in Fatal Crash*, N.Y. TIMES (Apr. 12, 2022), <https://perma.cc/K8ZB-H8KC> (noting suspension at time of impeachment).

106. Additionally, Senator Schoenbeck writes about calling his friend the morning after the incident to gather more information. This friend was Joseph Boever's cousin.

political ally for many involved.¹⁰⁷ The legislator-authors thus explain how they put their personal feelings aside and voted based on the evidence presented to them. This is noteworthy, as many authors felt that it was important to restore integrity to the state government and legal system through these impeachment proceedings.

V. CHOICES MADE DURING THE RAVNSBORG IMPEACHMENT

When Ravensborg was impeached and convicted in 2022, it was South Dakota's first full impeachment proceedings and first conviction.¹⁰⁸ The relative lack of historical precedent and open-ended language of South Dakota's impeachment article left significant discretion to the legislators who conducted the impeachment proceedings. This section collects and comments on several of the choices made during the Ravensborg case in an exercise of that discretion. We begin with the impeachment proceedings themselves and consider choices made about the timing of the impeachment proceedings, the standards of review, the meaning of "in office," plus several procedural rules. Following that analysis, we reflect on the precedential value of these choices. Finally, we turn to a very different type of choice and consider how personal and policy decisions put pedestrians at risk on rural roads.

A. TIMING OF THE PROCEEDINGS

During the impeachment proceedings themselves, an early choice the House made was to postpone any action until after Ravensborg's criminal case concluded. This resulted in a significant delay. Five months passed from the time of the accident until criminal charges were filed.¹⁰⁹ A week later, Representative Will Mortenson introduced a resolution to consider Ravensborg's impeachment.¹¹⁰ But the following day, the state court handling Ravensborg's case issued an order prohibiting release of further information about the matter while charges were pending.¹¹¹ This, in turn, appears to have prompted House leadership to amend Mortenson's resolution to delay impeachment proceedings until the criminal case

107. The House was made up of 62 Republicans and 8 Democrats. *House Legislators*, *supra* note 87. The Senate consisted of 32 Republicans and 3 Democrats. *Senate Legislators*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/29WP-HKFN> (last visited Dec. 23, 2023). Although significant factions had developed in the South Dakota Republican party, at least some legislators were politically allied with Ravensborg. For example, author Senator Rusch gave Ravensborg's nominating speech at the Republican convention.

108. Only the house impeachment vote of 1917 that rejected impeachment for Judge Levi McGee preceded this one. Tupper & Haiar, *supra* note 51.

109. Complaint, *supra* note 29.

110. S.D. H.R. Res. 7001, 96th Legis., Reg. Sess.

111. Order Precluding Disclosure of Criminal Investigation Information, *South Dakota v. Ravensborg*, No. MAG21-1 (S.D. 7th Cir. Feb. 25, 2021).

was resolved.¹¹² Accordingly, it was not until nine months from that date (and fourteen months after the incident) that the impeachment proceedings began.¹¹³

The South Dakota Legislature's approach was therefore the reverse of the order arguably envisioned—though not necessarily mandated—by the state constitution. As stated in Article XVI, Section 3: “[t]he person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to law.”¹¹⁴ The grammar and logic of this sentence suggest that the officer will typically first be “convicted or acquitted” (past tense) in an impeachment trial and *then* any criminal charges will be pursued.¹¹⁵

Having the criminal process first creates several disadvantages. As Senator Schoenbeck notes, allowing criminal charges to come first can result in a long intervening period where the officer is under a “cloud.” An officer charged with a crime will be less able to diligently perform his or her duties. Moreover, such charges cannot help but undermine the public's confidence in the officer and office itself—especially in situations like Ravensborg's, where the charges are directed at the state's chief prosecutor.

On the other hand, letting the criminal process play out might help develop the factual record.¹¹⁶ In the event the officer is convicted of a crime, it could also streamline the impeachment process. But there is a possible negative here too: legislators who are looking for political cover will easily be able to deflect the responsibility to make a decision on the merits.¹¹⁷

Regardless of the order of impeachment and criminal proceedings, therefore, a key point is that they are different processes that protect different interests.¹¹⁸ House Speaker Spencer Gosch recognized this, stating that the House must not

112. S.D. H.R. Res. 7001, 96th Legis., Reg. Sess.

113. *Id.*; Joe Sneve, *House Takes First Step Toward Impeachment of South Dakota Attorney General Jason Ravensborg*, ARGUS LEADER (Nov. 9, 2021), <https://perma.cc/88Z3-2YVR>.

114. S.D. CONST. art. XVI, § 3.

115. *Id.* Hamilton likewise assumed this to be the typical order for a federal impeachment in his discussion of the topic in Federalist No. 65. THE FEDERALIST NO. 65 (Alexander Hamilton) (“After having been sentenced to a perpetual ostracism from the esteem and confidence, and honours and emoluments of his country, [the officer] will still be liable to prosecution and punishment in the ordinary course of law.”).

116. As discussed above, this appears to have been the primary reason House leadership decided to delay the proceedings. S.D. H.R. Res. 7001, 96th Legis., Reg. Sess. Senator Schoenbeck also addresses this issue in his essay.

117. Hamilton underscored this danger in Federalist No. 65, remarking that “the strong bias of one decision . . . [might] be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision.” THE FEDERALIST NO. 65 (Alexander Hamilton). Scattered comments made during the Ravensborg impeachment indicate South Dakota's legislators faced such temptations. *See, e.g.*, Fortin & Levenson, *supra* note 84 (“On Wednesday, Jamie Smith, a Democrat who had sponsored the impeachment resolution, said that the possibility of any future impeachment efforts would depend on what happened with Mr. Ravensborg's [criminal] case.”).

118. The widely divergent potential consequences of the two proceedings—one being limited to the inability to hold public office, and the other involving the entire array of punishments available to the state—show at least this much. A recent example of the United States Senate treating these as distinct inquiries is the impeachment and conviction of federal district judge Alcee Hastings. Despite having been acquitted of perjury and bribery after a criminal trial, Congress still voted to impeach and convict Hastings several years later. *See Hastings v. United States*, 837 F. Supp. 3 (D.D.C. 1993) (discussing Hastings's impeachment and conviction).

“retry criminal matters. The constitution is clear on what our role is.”¹¹⁹ Senator Schoenbeck likewise echoed this sentiment when introducing the Senate rules: “This is neither a criminal nor civil legal proceeding. It is a constitutionally prescribed impeachment trial[.]”¹²⁰

B. STANDARDS OF REVIEW

Another issue the legislature addressed during Ravensborg’s impeachment was the appropriate standard (or *standards*) of review. The South Dakota Constitution does not mandate a particular evidentiary standard for impeachment or conviction.¹²¹ The Majority Report of the House Select Committee on Investigation nonetheless suggested a “clear and convincing evidence” standard should apply to the impeachment decision.¹²² The Senate rules, by contrast, elected not to specify any standard for the decision about whether to convict,¹²³ and instead simply required that senators take the oath spelled in out Article XVI, Section 2 to “do justice according to law and evidence.”¹²⁴

The House Majority Committee Report based its opinion almost entirely on *State ex rel. Steffen v. Peterson*,¹²⁵ a South Dakota Supreme Court case holding that statutory removals under South Dakota Codified Law section 3-17-6 require “clear, satisfactory and convincing evidence.”¹²⁶

There are a number of reasons to doubt whether *Steffen* sheds much light on the issue, however. First, *Steffen* involved statutory *removal* instead of impeachment. And it is not at all clear that the statutory removal process, in which

119. Bob Mercer, *House Leader Calls for Special Session to Consider Impeaching Attorney General Ravensborg*, KELO (Sept. 9, 2021, 5:06 PM), <https://perma.cc/AJ99-JEGQ>.

120. *A Resolution Establishing the Senate Rules for the Impeachment Trial of Attorney General Jason Ravensborg: Hearing on S. Res. 702, 96th Legis., Spec. Sess.*, at 12:18 (S.D. 2021) (statement of Senator Lee Schoenbeck), <https://perma.cc/C8KE-A5WB>; *see also* Transcript of Proceedings, *supra* note 2, at 244-45.

121. S.D. CONST. art. XVI. The only section of the Constitution that is potentially relevant is Article XVI, Section 2, which requires Senators to take an oath during an impeachment trial to “do justice according to law and evidence.”

122. H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess., at 6 (S.D. 2022), <https://perma.cc/7Z4Z-C244> (stating that the standard should apply to the determination of whether “articles of impeachment should issue”).

123. *See generally* S. Res. 702, 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/BF28-Y4SJ>; *see also* Transcript of Proceedings, *supra* note 2, at 244-45 (Senator Schoenbeck defending that decision).

124. S.D. CONST. art. XVI, § 2. This is a similar oath to that taken by United States Senators in an impeachment, which, since 1868, has provided: “I, [name], solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of [blank], now pending, I will do impartial justice according to the Constitution and laws: So help me God.” *See* Justin D. Rattey, *Impartial Justice: Restoring Integrity to Impeachment Trials*, 49 PEPP. L. REV. 123, 151-53 (2022) (discussing the history and importance of the impeachment oath).

125. H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess., at 5-6 (S.D. 2022), <https://perma.cc/7Z4Z-C244> (citing *State ex rel. Steffen v. Peterson*, 2000 SD 39, 607 N.W.2d 262). Though not mentioned in the House report, Nebraska specifically requires the use of a clear and convincing evidence standard in its state constitution, but the standard only applies to the *conviction* decision, not the initial decision to impeach. *See* NEB. CONST. art. III, § 17.

126. *Steffen*, 2000 SD 39, ¶ 19, 607 N.W.2d at 268.

a single trial judge decides whether to remove a lower-ranking official like the Gregory County Register of Deeds,¹²⁷ is sufficiently similar to the state legislature's two-thirds majority decision to impeach a constitutional officer like the state Attorney General. Second, *Steffen*'s procedural posture—an abuse-of-discretion review of a trial court's decision not to remove an officer—suggests it is a particularly uncertain foundation for drawing broad-reaching conclusions. Third, *Steffen* was not a decision about the proper standard for *charging* an official with a removable offense, it was about the standard for actually *removing* him. Accordingly, if the case was of any relevance for the Ravensborg impeachment, it would be most applicable to the *Senate*'s vote to *convict*, not the House's decision to impeach.

In that vein, some have argued, following the analogy to criminal law, that the House's impeachment decision (at least at the federal level) should be governed by the "probable cause" standard used by federal grand juries.¹²⁸ One of the only exchanges about impeachment appearing in South Dakota's 1885 constitutional convention debate could help draw a similar connection:

By the President: "The House of Representatives shall have the sole power of impeachment." When the House of Representatives have passed upon it it becomes an impeachment. They make a difference, I see, under this, between the trial and the impeachment.

Mr. McCallum: Then impeachment is equivalent to an indictment?

By the President: It appears so, under this first section.¹²⁹

127. *Id.*

128. See JARED COLE, TODD GARVEY & CONG. RSCH. SERV., R46013, IMPEACHMENT AND THE CONSTITUTION 49 (2019) (discussing this view and others); *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (noting that "probable cause" is the federal grand jury standard).

129. I DAKOTA CONSTITUTIONAL CONVENTION, *supra* note 62, at 582-83. The full context of this discussion is as follows:

Mr. McCallum: I think that Section 5 ought to be changed, and I move to strike out "he shall have been impeached" and substitute therefor, following the word "after", these words: "Articles of impeachment shall have been preferred against him". The way it stands the word "impeach" simply means the articles that are preferred; "impeached" in the past tense means tried and removed from office.

By the President: Have you examined Section 1?

Mr. McCallum: Well, it was read very hurriedly; I did not have the report when the reading commenced.

By the President: "The House of Representatives shall have the sole power of impeachment." When the House of Representatives have passed upon it it becomes an impeachment. They make a difference, I see, under this, between the trial and the impeachment.

Mr. McCallum: Then impeachment is equivalent to an indictment?

By the President: It appears so, under this first section. If there are no amendments proposed the question recurs upon the adoption of the report of the Committee on Impeachment and Removal from Office. (Adopted).

Arguably, this suggests the House should think of its task as akin to that of a prosecutor or grand jury.¹³⁰

Yet, the better view is likely the one the Senate took: that standards of review in impeachment and conviction are simply out of place, or at least left to the discretion of each individual member.¹³¹ By virtue of being entrusted to the legislative branch, impeachment proceedings are uniquely political in nature,¹³² and they protect different interests than a criminal or civil trial.¹³³ Not only does impeachment provide a vital means of safeguarding citizens from violations of the public trust,¹³⁴ it is also among the most important tools given to the legislature to preserve the separation of power between branches of government.¹³⁵ Adding a heightened evidentiary standard to a process that already requires significant political momentum and a supermajority vote, therefore, seems unwise—especially when the state’s constitution declines to specify one way or the other.¹³⁶

Beyond being unwise, moreover, any recommendation that members use a particular evidentiary standard is almost certainly unenforceable. Following *Nixon v. United States*,¹³⁷ the United States Supreme Court would surely refuse to consider whether any such standard was required at the federal level under the

130. See SDCL § 23A-5-18 (2016) (setting “probable cause” as the standard for grand juries in South Dakota).

131. See S.D. S. Res. 702; Transcript of Proceedings, *supra* note 2, at 244-45 (explaining the Senate’s decision not to impose a standard).

132. Accord THE FEDERALIST NO. 65 (Alexander Hamilton) (arguing that it is better for the Senate to be given the impeachment power than the Supreme Court because of Senators’ unique “degree of credit and authority,” and further remarking that, as a result of placing this power in a large body, “[such proceedings] can never be tied down by . . . strict rules”).

133. See THE FEDERALIST NO. 65 (Alexander Hamilton); see also H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess, at 28 (S.D. 2022), <https://perma.cc/7Z4Z-C244> (discussing the burden of proof in impeachment).

134. This is what Hamilton means when he remarks that impeachment is uniquely “political” in Federalist No. 65. He states:

The subjects of [impeachment] are those offences which proceed from the misconduct of public men, or, in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

THE FEDERALIST NO. 65 (Alexander Hamilton).

135. See THE FEDERALIST NO. 51 (James Madison) (discussing the importance of giving each branch “necessary constitutional means, and personal motives, to resist encroachments of the others”); THE FEDERALIST NO. 65 (Alexander Hamilton) (describing impeachment as “a bridle in the hands of the legislative body upon the executive servants of government”); THE FEDERALIST NO. 69 (Alexander Hamilton) (further discussing impeachment as a means of protecting against Presidential overreach); THE FEDERALIST NO. 81 (Alexander Hamilton) (calling the Senate’s impeachment power an “important constitutional check” against judicial usurpations).

136. This accords with the framers’ recognition that impeachment rules had to balance competing concerns. See MICHAEL MCCONNELL, THE PRESIDENT WHO WOULD NOT BE KING: EXECUTIVE POWER UNDER THE CONSTITUTION 306-12 (2020) (discussing this “goldilocks problem” in the context of impeachable offenses at the federal constitutional level). On the one hand, making impeachments too easy could result in a President who essentially “serve[s] at the pleasure of Congress.” *Id.* at 312 (citing comments from George Mason and James Madison during the convention debates). On the other hand, making impeachments too difficult would undermine their ability to protect the public and preserve the separation of powers. See *id.*

137. 506 U.S. 224 (1993) (holding that Nixon’s claim that the Senate violated Article III, Section 3 by largely using a committee to review the evidence against him presented a nonjusticiable political question).

political question doctrine. South Dakota's political question jurisprudence is comparably less well-developed, but the likely result would be the same.¹³⁸

C. THE MEANING OF "IN OFFICE"

The next choice the legislators faced in the Ravensborg impeachment relates to the meaning of "in office" in Article XVI, Section 3—which, again, permits impeachment for "drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office."¹³⁹ A much debated question during the proceedings was whether the phrase "in office" in this sentence modifies: (a) only the "misdemeanor" ground; (b) both misdemeanors and malfeasance; or (c) every item on the list. In considering the issue, the Select Committee Majority Report analyzed precedent, Oxford commas, canons of construction, and the differences between Article XVI, Section 3 and Section 4¹⁴⁰ before offering the rather tepid conclusion that the evidence "lends credence to the possibility that the term 'in office' only modifies 'misdemeanor' and 'malfeasance.'"¹⁴¹ But the report waffles again later on, suggesting that "any corrupt conduct may have had to occur in office in order to serve as a basis for impeachment."¹⁴² The Select Committee Minority Report briefly commented on this issue, saying only that it found "elected officers of the State are always 'in office.'"¹⁴³

Opinions during the Senate trial also ran the gamut. On the one side were those arguing that the constitutional text required a connection to official conduct and Ravensborg's actions lacked that connection.¹⁴⁴ On the other side were many who thought the "in office" language modified only the last items (or item) on the list.¹⁴⁵ Then there were still others whose comments suggested that the relevant

138. See *Gray v. Gienapp*, 2007 SD 12, ¶ 17, 727 N.W.2d 808, 812 (noting that separation of powers principles prevent the branches of government from encroaching on each other); *MacIntyre v. Wick*, 1996 SD 147, 558 N.W.2d 347 (recognizing the limits of the Court to tread on discretionary powers specifically granted to another branch of government). Notably, the *Gray* majority approvingly cites the dissenters in *Wick*, who explicitly connected South Dakota's separation of powers doctrine with political question concerns, saying "[a]t its essence, the dispute here is a nonjusticiable controversy—a political question—which is beyond our jurisdiction to consider in any form." See *Gray*, 2007 SD 12, ¶ 29, 727 N.W.2d at 815 (citing *Wick*, 1996 SD 147, ¶ 63, 558 N.W.2d at 364 (Sabers & Amundson, JJ, dissenting)).

139. S.D. CONST. art. XVI, § 3.

140. The list of grounds for impeachment in Article XVI, Section 3 and grounds for removal in Article XVI, Section 4 are similar, but their order differs in ways that are perhaps telling. Article XVI, Section 3's list includes: "drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office." And Article XVI, Section 4, which applies to removal, lists: "misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency."

141. H.R. SELECT COMM., MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess., at 7-9 (S.D. 2022), <https://perma.cc/7Z4Z-C244>.

142. *Id.* at 13.

143. H.R. SELECT COMM. ON INVESTIGATION, MINORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/CM8X-UY82>.

144. Ravensborg's counsel at least implicitly suggested that the "in office" language might apply to every item on the list. Transcript of Proceedings, *supra* note 2, at 233. Senator Johns was among those who thought the only crimes at issue were misdemeanors, and so argued that the appropriate ground to look at—even for the first article of impeachment—was the "misdemeanors" ground. *Id.* at 256-57.

145. *Id.* at 259.

conduct was sufficiently connected with Ravensborg's office¹⁴⁶ or seemed not to put much stock in these discussions one way or the other.¹⁴⁷

Admittedly, therefore, the choice the legislature made here is not a certainty. The articles presented to the Senate framed the two potential impeachment grounds as: (1) "crimes causing the death of Joseph Boever,"¹⁴⁸ and (2) "malfeasance in office following the death of Joseph Boever."¹⁴⁹ Focusing on the first of these (which is the most relevant to the present question), a legislator voting to convict might have concluded that the constitution did not require any "in office" connection for criminal conduct. Or, a legislator could have thought Ravensborg's conduct was sufficiently connected with the office by virtue of his behavior immediately after the incident or that it happened on the way home from a political function. Or, a legislator might not have cared.

While these are all conceptual possibilities, however, the debates do suggest that many senators voting for impeachment rejected the argument that the "in office" provision applies to every ground. Senator Wheeler offered a particularly powerful statement in this direction:

[I]f you believe the Respondent's argument that it only applies to crimes in office, well, then someone could commit murder not related to their office, be convicted and sent to prison, and yet still be an official of this state because we would have been powerless to remove them. That cannot be. That's an absurd reading of our Constitution.¹⁵⁰

It is difficult to conceive of a credible answer to this argument. If impeachment is to serve its intended function of guarding the people and branches of government from breaches of the public trust, surely it would make little sense to limit its scope in this way.¹⁵¹

One further argument for reading "in office" as modifying only the final item on the list comes from the drafting history of Article XVI. Currently, South Dakota's constitution allows impeachment for "drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office,"¹⁵² and the grammatical construction of this list of grounds indicates that "malfeasance or misdemeanor in office" together form the last item in the list and should be read as a single phrase.¹⁵³ Yet prior proposed versions of this section had different sentence structure. In 1883, an early version would have allowed impeachment for "corrupt

146. *Id.* at 276 (suggesting impeachment was appropriate on the first article because the Attorney General lied to law enforcement in the course of the investigation); *see also id.* at 250-51 (discussing how Ravensborg's actions in identifying himself as the attorney general may have made this about his office).

147. *See, e.g., id.* at 245-46.

148. *Id.* at 242.

149. *Id.* at 269.

150. *Id.* at 259.

151. *See* discussion *infra* Part V.E (discussing the need for flexibility in impeachment).

152. S.D. CONST. art. XVI, § 3.

153. RICHARD W. WYDICK, *PLAIN ENGLISH FOR LAWYERS* 88 (5th ed. 2005) ("When a sentence contains a series of three or more items joined with one conjunction, put commas after each item except the last.").

conduct, or malfeasance, or crimes or misdemeanors in office,”¹⁵⁴ suggesting “in office” modified both “crimes” and “misdemeanors,” or perhaps only “misdemeanors,” but certainly not “malfeasance.” Yet the final 1883 proposal provided for impeachment for “corrupt conduct, or malfeasance, or crimes, or misdemeanors in office,” with the added Oxford comma suggesting “in office” only modified “misdemeanors” and nothing else.¹⁵⁵

The constitution adopted in 1885 is closer to the modern text, allowing impeachment for “drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office.”¹⁵⁶ Here, either the Oxford Comma present in the modern-day version was missing or perhaps “in office” was meant to modify the final *three* grounds. In 1889, the Committee on Legislation proposed the exact same language adopted in 1885.¹⁵⁷ That proposal was adopted and referred to the “Committee on Arrangement and Phraseology,”¹⁵⁸ where a change seemingly occurred because the Oxford Comma appeared in the final 1889 constitution, thus giving South Dakota the list of grounds still available today: “drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office.”¹⁵⁹

Overall, this seems to make clear that “in office” is applicable to both “malfeasance” and “misdemeanors,” but not to “drunkenness, crimes, or corrupt conduct.”

D. PROCEDURAL AND EVIDENTIARY RULES

Unlike court trials with clearly established procedural and evidentiary rules, impeachments are political in nature and not bound by the same limitations.¹⁶⁰ In the House Select Committee hearings, the committee leaders decided to question those appearing before it rather than allow presentations.

154. XXI SOUTH DAKOTA HISTORICAL COLLECTIONS, *supra* note 62, at 343-44. This was read and referred to the Committee on Printing. *Id.* The precise language from that committee did not survive, but the vote adopting the committee’s report is recorded. *Id.* at 386.

155. I DAKOTA CONSTITUTIONAL CONVENTION, *supra* note 62, at 37.

156. PRESENTATION OF DAKOTA’S CLAIMS, AND MEMORIAL PRAYING FOR ADMISSION, *supra* note 63, at 45.

157. II DAKOTA CONSTITUTIONAL CONVENTION, *supra* note 65, at 167. The report that day indicated this proposed language followed the “Sioux Falls Constitution,” which is a reference to the 1885 Constitution. Accordingly, we would expect this to be the same. *Id.* at 166.

158. *Id.* at 170. There was substantial discussion on this day as to whether there were “typographical or clerical” errors and how to fix those. *Id.*

159. *Compare Constitution of South Dakota, 1889, supra* note 66, at 198, with S.D. CONST. art. XVI, § 3.

160. See generally John Kruzell, *Five Ways Trump’s Impeachment Differs from a Court Trial*, THE HILL (Feb. 8, 2021), <https://perma.cc/8P6J-TKL4> (noting, at the federal level, that “[c]ourt trials largely stick to a standard, uniform script. By contrast, the framers of the Constitution empowered the Senate to devise its own rules”); see also Elizabeth DeCoux, *Does Congress Find Facts or Construct Them? The Ascendance of Politics over Reliability, Perfected in Gonzales v. Carhart*, 56 CLEV. ST. L. REV. 319, 340 (2008) (noting at the federal level that “a modern Senate impeachment trial bears little resemblance to a court trial, because court trials are governed primarily by rules while impeachment trials are governed primarily by the broad, Constitutionally-conferred power of the Senate to conduct such trials and render a verdict”).

In the Senate, rules were drafted specifically for this impeachment trial,¹⁶¹ and several are worth mentioning. All documents to be presented during the trial were to be submitted beforehand, so that each senator had an opportunity to review the evidence before it was presented to them on the Senate floor.¹⁶² Pre-trial motions were prohibited,¹⁶³ thus avoiding an initial challenge to the sufficiency of the articles of impeachment. The rules strictly governed conduct during the proceeding¹⁶⁴ and set strict time limitations for the parties.¹⁶⁵ Additionally, the Senate declined to follow the South Dakota Rules of Evidence.¹⁶⁶

It may be that some procedural choices were influenced by a lack of lawyers in the South Dakota Legislature. The number of lawyer-legislators has been in decline across the country, and South Dakota is no exception.¹⁶⁷ The low numbers of lawyer-legislators may have also led to the decision to bring in outside lawyers to assist. The House Select Committee was tasked with providing clear guidance to house members about the impeachment law in South Dakota¹⁶⁸ and hired author Sara Frankenstein to serve as its independent counsel in order to provide that clear advice.¹⁶⁹ While the Senate never hired outside counsel, Senator Schoenbeck brought in outside prosecutors.¹⁷⁰ In addition, the state constitution provides that the Lieutenant Governor will preside over the Senate trial,¹⁷¹ but

161. At the direction of Senator and President Pro Tempore Lee Schoenbeck, Senator David Wheeler studied the impeachment rules of other states, and with input from Senator Art Rusch and Senator Tim Johns, he drafted a set of rules well before they were needed at the Senate trial.

162. S.D. S. Res. 702.

163. *Id.* at R. 3-2.

164. *See id.* at R. 2-1 to -12. These rules address how the Senate and those attending the trial would conduct itself during the proceeding—that the Lieutenant Governor would preside, that each senator would take an oath before the trial, that certain individuals could be present in certain areas of the makeshift courtroom, among others.

165. The Senate Rules set many time parameters for the trial itself, such as time allotted per party for opening statements; presentation of evidence; and closing statements. *Id.* at R. 4-3(2)-(5), (9). Each party had four hours to present evidence. *Id.* at 4-3(4)-(5). Although Ravensborg did not end up testifying, there was an exception that allowed him to testify without being subject to time constraints. *Id.* at R. 4-3(6).

166. *Id.* at R. 4-2.

167. Jen Fifield, *State Legislatures Have Fewer Farmers, Lawyers; But Higher Education Level*, STATELINE (Dec. 10, 2015), <https://perma.cc/VXT3-6MQ6> (“The percentage of lawyers serving in statehouses dropped from 22.3 percent in 1976 to 14.4 percent in [2015].”). For this special issue, six lawyer-legislators wrote essays, but most legislators in South Dakota have no formal legal training. For example, Representative Cwach was the only Democratic lawyer in the house at the time of assignments to the House Select Committee, leading to his appointment to the committee.

168. Sneve, *supra* note 113 (describing Representative Fred Deutsch as asking for “clear guidance from the committee on what is and what isn’t an impeachment offense”).

169. With Sara Frankenstein, the house committee created a lawyer-client relationship, and paid her like counsel. The house, though, never did appoint trial managers. Senator Schoenbeck writes about his communication with house leadership about the Senate trial and his view on the House using trial managers.

170. For Senator Schoenbeck, it mattered that Vargo and Tracy did not charge the Senate for their services—since both were full-time employees of the state at that time, both considered their services to the Senate as part of their salaried jobs. In the future, the Senate may not get so lucky as to have two highly qualified prosecutors willing to prosecute the case without requiring additional compensation. If there is another impeachment, different choices may be made.

171. S.D. CONST. art. IV, §5.

South Dakota's sitting Lieutenant Governor was a rancher, not a lawyer.¹⁷² To help the Lieutenant Governor, a lawyer (and former Lieutenant Governor) was brought in to serve as his advisor.¹⁷³ The need for outside legal help in the future will likely vary based on the impeachment and the qualifications of those involved in the impeachment process.

One final procedural rule deserves comment. The Senate rules called for a separate vote on whether to bar Ravensborg from serving again in public office.¹⁷⁴ After convicting Ravensborg on both counts, the Senate also voted to bar Ravensborg from holding future office.

The South Dakota Constitution, in discussing the Senate convictions, says that “judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state,” and that “[t]he person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to law.”¹⁷⁵ Whether the vote to determine whether Ravensborg could hold future office was constitutionally necessary seems an open question. The lack of a comma between the phrases “removal from office” and “disqualification from future office” in South Dakota's impeachment article—a feature which is different from the U.S. Constitution and a number of other state constitutional provisions—arguably provides support for the conclusion that a separate vote was not needed.¹⁷⁶ Even if not constitutionally required, there was certainly no harm from taking the procedural step to have a separate vote that clearly expressed the Senate's views.

E. THE PRECEDENTIAL VALUE OF THESE CHOICES

Nearly 133 years after South Dakota's constitution was ratified, the Ravensborg impeachment provided the state legislature with its first test-drive of the framework set out in Article XVI. This initial attempt at filling in the details of the impeachment process will be the starting point for any future proceeding—and the constitution's relative lack of specificity on the subject only ensures this is so. Constitutional law is often handed down from on-high by the judiciary, but the practices of governmental institutions and compromises reached by political

172. *Lt Governor Larry Rhoden*, S.D. GOVERNOR KRISTI NOEM (last visited Feb. 16, 2023), <https://perma.cc/KZZ7-TEDJ>.

173. Matt Michels is the attorney who assisted the Lieutenant Governor. Joe Sneve, *Former South Dakota Lt. Gov. Matt Michels to Aid in AG Jason Ravensborg's Impeachment Trial*, ARGUS LEADER (June 17, 2022, 5:46 PM), <https://perma.cc/U7G5-PEAJ>.

174. S.D. S. Res. 702, at R. 5-5.

175. S.D. CONST. art. XVI, §§ 2-3.

176. *Compare* S.D. CONST. art. XVI, § 3, with U.S. CONST. art. I, § 3 (“Judgment . . . shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office . . . under the United States[.]”). Of nearby state constitutions that address the issue, Iowa, IOWA CONST. art. 3, § 20, Ohio, OHIO CONST. art. II, § 24, and Wisconsin, WISC. CONST. art. VII, § 1, include a comma or otherwise suggest the future office prohibition is optional, while Arkansas, ARK. CONST. art. 15, § 1, Illinois, ILL. CONST. art. IV, § 14, Minnesota, MINN. CONST. art. VIII, § 2, Nebraska, NEB. CONST. art. III, § 17, and North Dakota, N.D. CONST. art. XI, § 10, do not contain a comma.

branches can also establish legal norms.¹⁷⁷ This is especially the case in the impeachment context, which is uniquely insulated from judicial review.¹⁷⁸ The rules drafted by the House and Senate and the sustained attention given to decisions such as the order of proceedings, standards of review, meaning of “in office,” and others take a first and meaningful step toward solidifying such norms.

Like any test drive, however, the benefits of the experience arise not only from successes, but also from the kinks that must be ironed out. And as several authors in this special issue concede, they may not have done everything right.¹⁷⁹

In that regard, there is some precedent *against precedent* in the impeachment context. Various scholars have expressed skepticism about viewing particular federal impeachments as establishing norms that must later be followed. At least one pair of authors has argued that the federal impeachment of Judge Pickering (the federal judge impeached and convicted for conducting court while intoxicated) “affords little precedential value” for later impeachments.¹⁸⁰ In writing about the impeachment of President Andrew Johnson, another scholar says “[c]lear legal lessons from the Johnson impeachment—or any impeachment—are difficult to identify.”¹⁸¹

Hamilton’s comments about impeachment in Federalist No. 65 are also suggestive. The main thrust of his remark that “[impeachments] can never be tied down by such strict rules, either in the delineation of the offence by the prosecutors, or in the construction of it by the judges,” and his subsequent statement about “[t]he awful discretion which a court of impeachments must necessarily have” seems to be that impeachment is *flexible by design*.¹⁸² Different proceedings will involve different offenses, different levels or types of officers,

177. See Baude, *supra* note 4, at 1 (explicating Madisonian “liquidation”).

178. See discussion *supra* Part V.B (discussing the political question doctrine and impeachment).

179. For example, the Legislative Research Council staff of Reed Holwegner, Justin Goetz, and John McCullough suggest “the legislative history of the Impeachment Special Session should be viewed as a guide and not as a manual.”

180. Kelley & Wyllie, *supra* note 72, at 680.

181. Oliver, *supra* note 74, at 124.

182. THE FEDERALIST NO. 65 (Alexander Hamilton). Justice Story had a similar view. See JOSEPH STORY, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 765 (Thomas M. Cooley ed., Little, Brown, and Co. 4th ed. 1873). He states:

The very habits growing out of judicial employments; the rigid manner, in which the discretion of judges is limited, and fenced in on all sides, in order to protect persons accused of crimes by rules and precedents; and the adherence to technical principles, which, perhaps, distinguishes this branch of the law, more than any other, are all ill adapted to the trial of political offences in the broad course of impeachments. And it has been observed with great propriety, that a tribunal of a liberal and comprehensive character, confined, as little as possible, to strict forms, enabled to continue its session as long, as the nature of the law may require; qualified to view the charge in all its bearings and dependencies, and to appropriate on sound principles of public policy the defence of the accused, seems indispensable to the value of [an impeachment] trial.

and different political climates.¹⁸³ So having a (reasonably) malleable framework is an advantage.

Moreover, and more obviously, if the choices made by the state legislature in the Ravensborg impeachment are to establish norms by virtue of a pattern and practice, one practice is not enough.¹⁸⁴ Future legislatures will have to continue to make the same choices before the norms would solidify. This of course requires additional opportunities to use Article XVI's machinery, which—if past practice is any indication—is unlikely to happen soon.

But a first step in a particular direction still counts for something.

F. PEDESTRIAN DEATHS

All of these choices were necessitated by one particular choice—Ravnsborg's. He did not choose to hit Joseph Boever, but he chose how to drive and how to respond to the incident. Boever's death is tragic—his life was cut short, and his friends and family lost years of companionship.¹⁸⁵ All of the analysis and politics that happened following his death is secondary to that tragedy. Unfortunately, Boever's untimely death as a pedestrian is not unique—pedestrian deaths are far too common across the United States. From 2010 to 2020, pedestrian deaths increased by 54%, reaching an all-time high in 2021.¹⁸⁶ Despite only 19% of the United States' population living in rural areas, nearly half of all motor vehicle deaths occur on rural roads.¹⁸⁷ In South Dakota—allegedly the easiest state in which to get a driver's license¹⁸⁸—fourteen pedestrian deaths caused by vehicles on public roadways were reported in both 2020 and 2021.¹⁸⁹

183. Consider, for example, the difference between impeaching a sitting Governor versus a circuit judge.

184. See Baude, *supra* note 4, at 1 (listing “a course of deliberate practice” and “constitutional settlement” as requirements for constitutional liquidation).

185. See generally Tom Kludt, “*I Did Not Know It Was a Man*”: *The Surreal Story of How a Deadly Crash Upended South Dakota Politics*, VANITY FAIR (Aug. 25, 2021), <https://perma.cc/2LKW-ZDTD> (discussing the responses of Boever's family to the accident and his death).

186. GOVERNORS HIGHWAY SAFETY ASS'N, PEDESTRIAN TRAFFIC FATALITIES BY STATE: 2021 PRELIMINARY DATA (JANUARY – DECEMBER) 5 (2022), <https://perma.cc/8954-AR4M> [hereinafter PEDESTRIAN TRAFFIC FATALITIES]; see also SCHMITT, *supra* note 12, at 2 (noting rising pedestrian deaths in recent years, representing “a reversal of the pattern of generally improving outcomes seen in traffic safety for more than a generation”).

187. *Rural Roads are Disproportionately Deadly, New GHSA Study Finds*, GOVERNORS HIGHWAY SAFETY ASS'N (Sept. 1, 2022), <https://perma.cc/K4ZS-GND3>. These are all vehicle deaths, not just pedestrian deaths. There are several reasons why rural roads see more accidents, including that some of the deaths on rural roads are likely of urban residents traveling through rural areas.

188. *Passing the Test*, SIEGFRIED & JENSEN, <https://perma.cc/V3ZB-KMQM> (last visited Jan. 13, 2023) (discussing why South Dakota is “deemed the most lax” for driving licensure); see also Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 523-24 (2020).

189. PEDESTRIAN TRAFFIC FATALITIES, *supra* note 186, at 7; see also *id.* at 6 (explaining which deaths were counted).

Even more tragic, of all races and ethnicities, Native Americans had the highest per-capita rate of pedestrian deaths from 2015-2019.¹⁹⁰ “[E]ven after controlling for differences in walking rates, when compared with white, non-Hispanic pedestrians, Black pedestrians are two-thirds more likely to die from being struck by motorists and Native American pedestrians are more than twice as likely.”¹⁹¹ Native Americans also face the highest risk of being the victim of a hit-and-run pedestrian death.¹⁹² These increased risks matter in South Dakota where there are nine Indian Reservations and Native Americans are the largest minority group, comprising at least 8.57% of the state’s population.¹⁹³ This hard truth should be disturbing to South Dakotans and ignite action. But issues affecting Native Americans are, unfortunately, too-often ignored and overlooked.

Still, there is some hope for reducing pedestrian deaths. Policy decisions contribute to this problem,¹⁹⁴ including the failure to install sidewalks.¹⁹⁵ Certainly, there was no sidewalk along U.S. Highway 14 where Boever was instead walking along the shoulder of the two-lane highway. The same is true for much of rural South Dakota, especially reservation lands where poor roads and high poverty levels lead to more pedestrian traffic.¹⁹⁶ The South Dakota Department of Transportation has recognized this problem and is currently working to install 23.2 mile, 10-foot-wide, lighted sidewalks along U.S. Highway 83 near White River.¹⁹⁷ While this is a step in the right direction, more must be done to remove “pedestrian deaths” as a significant cause of death in the Native American community. More sidewalks must be installed in rural areas with high

190. GOVERNORS HIGHWAY SAFETY ASS’N, AN ANALYSIS OF TRAFFIC FATALITIES BY RACE AND ETHNICITY 13 (2021), <https://perma.cc/Q9TL-4FCZ> [hereinafter TRAFFIC FATALITIES BY RACE AND ETHNICITY].

191. Gregory H. Shill, *The Future of Law and Transportation*, 106 IOWA L. REV. 2107, 2115 (2021).

192. TRAFFIC FATALITIES BY RACE AND ETHNICITY, *supra* note 190, at 14. Although the usefulness of these numbers is limited because they do not control for walking rates, overall Native Americans are two times more likely than the next highest race, Black Americans, and seven times more likely to be the victim of a hit-and-run than are White Americans. *Id.* In fact, the Centers for Disease Control and Prevention (CDC) has reported that a leading cause of death for Native Americans is motor vehicle traffic collisions. *Tribal Road Safety*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 18, 2022), <https://perma.cc/H5UQ-SDL4>.

193. *Indian Country*, U.S. ATT’YS OFF.: D.S.D., <https://perma.cc/RX9B-4ZDE> (last visited Jan. 13, 2023); *Quick Facts: United States*, U.S. CENSUS BUREAU, <https://perma.cc/ER5Y-EY9Q> (last visited Jan. 13, 2023).

194. SCHMITT, *supra* note 12, at 3; *see also* Sara C. Bronin & Gregory H. Shill, *Rewriting Our Nation’s Deadly Traffic Manual*, 135 HARV. L. REV. F. 1, 3-5 (2021) (discussing, generally, “transportation policy failures” caused by the Manual on Uniform Traffic Control Devices for Streets and Highways, especially as it privileges the needs of cars over the needs of pedestrians).

195. South Dakota’s constitution requires that money collected through the gas tax “be used exclusively for the maintenance, construction and supervision of highways and bridges of this state.” S.D. CONST. art. XI, § 8. While other states “divert” some of their gas tax profits to sidewalks, South Dakota does not. Baruch Feigenbaum & Joe Hillman, *Revealing State Gas Tax Diversions*, REASON FOUND. (June 2020), <https://perma.cc/MUH7-5A2F>.

196. Angie Schmitt, *Native American Pedestrians Have Highest Death Rate*, STREETS BLOG USA (Feb. 20, 2019), <https://perma.cc/8KPU-LHG5>.

197. *Work Begins on U.S. Highway 83 Between White River and Murdo*, S.D. DEP’T OF TRANSP. (Apr. 25, 2022), <https://perma.cc/U4DN-YUTT>; *White River – U.S. Highway 83 North to Murdo*, S.D. DEP’T OF TRANSP., <https://perma.cc/25JL-TGJL> (last visited Jan. 11, 2023).

foot traffic, which, in South Dakota, are most concentrated on or near the nine Reservations.

Not every road can have a sidewalk, but choices about safety measures do, in fact, impact safety.¹⁹⁸ Like many pedestrians in rural South Dakota, Boever was walking along the shoulder of a major highway with no available sidewalk when he was struck and killed. The state had installed the minimal safety feature of rumble strips, and Boever was carrying a flashlight that increased his visibility.¹⁹⁹ These safety measures all failed: Ravensborg drove both sets of tires over the rumble strips and apparently did not see the illuminated flashlight in Boever's hand.²⁰⁰ Had there been a sidewalk along U.S. Highway 14—or at least a safer and wider shoulder—this story might have a different ending.²⁰¹ None of this excuses Ravensborg's acts. The Attorney General, like any other South Dakotan, must follow the state's traffic laws.²⁰²

Had Ravensborg faced earlier punishment for failing to follow traffic laws, he may have been more attentive the night of the accident. If South Dakota had and enforced distracted driving laws, Ravensborg may have paid better attention while driving that night, Boever would still be alive, and Ravensborg would have completed his term as the state's chief prosecutor. While traffic laws, and their potential enforcement, did not adequately dissuade Ravensborg from breaking traffic laws the night of the incident,²⁰³ Ravensborg's unusual status as a constitutional officer subject to impeachment at least provided some means of redress.

VI. CONCLUSION

From the incident on September 12, 2020, until the conviction for impeachment on June 21, 2022, South Dakota was a source of national news.²⁰⁴ South Dakota saw its first impeachment trial on the heels of President Trump's second impeachment,²⁰⁵ a time period when the nation was attuned to

198. Sidewalks can save lives and prevent pedestrian deaths. See Vanessa Casado Perez, *Reclaiming the Streets*, 106 IOWA L. REV. 2185, 2191 (2021) (“Sidewalks can prevent 88 percent of accidents involving cars and pedestrians walking along the road.”).

199. See Transcript of Proceedings, *supra* note 2, at 14, 64, 92.

200. *Id.*

201. See Casado Perez, *supra* note 198, at 2191 (discussing how sidewalks prevent accidents).

202. Remember, Ravensborg pleaded guilty to the crimes of driving while using a cellphone and making an illegal lane change. Judgment of Conviction and Sentence, *supra* note 32.

203. For a recent discussion of the failure of criminal law to prevent pedestrian deaths, see John Clennan, *How to Deter Pedestrian Deaths: A Utilitarian Perspective on Careless Driving*, 36 TOURO L. REV. 435, 469 (2020) (“Therefore, to deter future careless driving, the Legislature should make the consequences for the negligent death of a pedestrian more severe.”).

204. See, e.g., Kludt, *supra* note 185 (providing national coverage of the incident and its aftermath); Marie Fazio, ‘I Discovered the Body’: South Dakota’s Attorney General Offers New Crash Details, N.Y. TIMES (Sept. 15, 2020), <https://perma.cc/48RX-QM53> (providing national coverage of the incident and its aftermath).

205. Nicholas Fandos & Sheryl Gay Stolberg, *House Delivers Impeachment Charges to Senate, Paving the Way for a Trial*, N.Y. TIMES (Feb. 4, 2020), <https://perma.cc/9P23-G3SQ>.

impeachment for those in elected office. Moreover, the facts were complicated and—quite honestly—a bit wild.

One might even accuse the facts of being more like the set-up of a Stephen King novel than the set-up for an impeachment trial. Stephen King could even draw inspiration from this rural South Dakota incident, but he doesn't need to—he's already lived a similar tale. In 1999, King was walking on the shoulder of a rural highway in Maine when a distracted driver drove onto the shoulder and hit him,²⁰⁶ just like Ravensborg hit Boever. Both Ravensborg and the driver who hit King were in their early forties and had histories of poor driving.²⁰⁷ Like Ravensborg, the driver who hit King “told friends later that he thought he'd hit ‘a small deer.’”²⁰⁸ That is, he thought it was a deer until he found King's “bloody spectacles” inside his vehicle,²⁰⁹ much like Boever's glasses were found inside Ravensborg's car. What similarities—but also what differences. King survived;²¹⁰ Boever did not.²¹¹ Neither driver served time in jail, although the driver in King's incident faced more serious charges, including aggravated assault.²¹² King's assailant had no public life and died quietly at his home six months later;²¹³ Ravensborg faced South Dakota's first impeachment and conviction.

Although the authors in this special issue played important roles in the state's first impeachment process, many of them express their hopes that another impeachment does not arise. None of the authors are eager to do it again, to say the least.

Despite the differing of opinions between authors, all recognize the difficulties these proceedings presented, and all respect the votes of their counterparts, whether or not they agree. And regardless of how the authors voted, all agree on one thing—Ravnsborg's actions cannot be condoned. Whether or not an author believed Ravensborg's conduct rose to the level required by the articles of impeachment, all expressed an uneasiness, at the very least, with Ravensborg's conduct.

South Dakota's first impeachment proceedings required countless hours of work and collaboration.²¹⁴ We acknowledge and express appreciation to all those

206. STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* 253-55 (2000).

207. *Compare* Transcript of Proceedings, *supra* note 2, at 253 (providing transcript where author Senator Arthur Rusch explained that “It's clear that Attorney General Ravensborg has a long history of being a poor driver. He doesn't pay attention when he drives”), *with* KING, *supra* note 206, at 255 (“This is Bryan Smith, forty-two years of age, the man who hit me with his van. Smith has got quite the driving record; he has racked up nearly a dozen vehicle-related offenses.”).

208. KING, *supra* note 206, at 255.

209. *Id.*

210. *Id.* at 258 (crediting professional and fast emergency care for his survival).

211. Dunteman, *supra* note 1.

212. KING, *supra* note 206, at 262. The driver who hit King pleaded to driving to endanger and received a six-month suspended sentence. *Id.*

213. *Id.* at 263.

214. This process even extended over two legislative sessions (the 2021 regular session and a special session). *Compare* S.D. H.R. Res. 7001, 96th Legis., Reg. Sess., *with* H.R. Res. 7001, 96th Legis., 2d Spec. Sess. (indicating resolutions being adopted during different sessions).

involved in the proceedings, including the twelve authors contained within this special issue. They quite literally made South Dakota history.