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GRAVE AND EXCEPTIONAL: INITIATING THE IMPEACHMENT OF THE ATTORNEY GENERAL

WILL D. MORTENSON[†]

No state official had ever been impeached and removed from office in South Dakota.¹ The impeachment proceedings against Attorney General Jason Ravensborg were burdensome on the state, the family of the victim, the legislature, and Mr. Ravensborg himself. It should have never been needed, and I am hopeful impeachment is never needed again.

In the first year of my first legislative term, about six weeks after I had been sworn in, I introduced articles of impeachment under Article XVI of the South Dakota Constitution against Attorney General Ravensborg for crimes causing the death of Joseph Boever and misdemeanors and malfeasance in office related to the investigation of such crimes.² This article recounts the decision to pursue impeachment and provide additional detail to the legislative process that resulted in impeachment and removal from office.

Mr. Ravensborg drove his vehicle off the road and struck and killed Joseph Boever on September 12, 2020.³ Mr. Boever's body lay in the ditch until the next day, when Mr. Ravensborg found the body.⁴ Details of the crash, including the audio from his 9-1-1 call, were released by investigators within days.⁵ Mr. Ravensborg refused to speak to the media, but a few days after the crash, issued a letter on Attorney General letterhead attempting to provide his version of the incident.⁶ The letter struck me as politically motivated and odd to be issued by an attorney subject to a criminal investigation. The letter did not include his initial claim to the 9-1-1 operator that he was "in the middle of the road." It also stated that he was not going to publicly address the events, in deference to the process, while putting out a statement addressing the events in an effort to influence the process.

After seeing the initial flurry of information, it seemed clear that Mr. Ravensborg had been off the road when he struck Mr. Boever and, therefore,

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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>.

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

3. Dunteman, *supra* note 1.

4. *Id.*

5. *See South Dakota Attorney General Who Hit & Killed Man Told Police He Hit a Deer*, CNN (Sept. 15, 2020, 3:45 PM), <https://perma.cc/7JXJ-F42C>.

6. Transcript of Proceedings at 225, 250, *In re Impeachment of Attorney General Jason Ravensborg*, 96th Legis., Spec. Sess. (June 21, 2022), <https://perma.cc/CAU6-3Z9A>.

committed some crime. It appeared to be an instance with a small amount of culpability—everyone who has ever driven has hit a rumble strip—and a large amount of harm. Still, there were a lot of oddities: the 9-1-1 call, the body not being reported until the next day, and the letter, so I wondered if more culpability existed than was initially reported. Very few details were released after that first month, and we entered the legislative session in 2021 not knowing what the charges might be or how the Attorney General’s Office was functioning.

On February 8, 2021, I tested positive for COVID-19. The virus was making its way through the Capitol. Our daughter, Jules, was just three months old at the time, so I was certainly not welcome at home. I took up a quarantine post at my parents’ house in Fort Pierre. The legislative rules permitted remote participation in committees and on the floor, so I could keep serving while in my ten-day quarantine.

On February 12, 2021, the Assistant State’s Attorney for Hyde County announced her charging decision against Mr. Ravnsborg for his crimes related to killing Mr. Boever.⁷ She announced an intention to pursue traffic misdemeanors instead of involuntary manslaughter.⁸ State’s Attorney Sovell held a press conference to explain that she did not feel that enough evidence existed to ensure a guilty verdict on the “reckless” element of an involuntary manslaughter charge.⁹ Recklessness is generally described as taking a course of action that involves known risks, a higher standard than mere negligence.¹⁰ The decision laid entirely with the State’s Attorney and was final. I will not question the correctness of that charging decision—that is not my job.

Shortly after the charging decision was announced, I began hearing from members of the legal and law enforcement communities. They explained several other cases with lighter or similar facts where involuntary manslaughter was charged, even if pled down subsequently. More concerning, they explained the deterioration of the criminal justice system in South Dakota as a result of lack of trust in Attorney General Ravnsborg. Many state’s attorneys and local law enforcement rely on the Attorney General’s Office for support and collaboration, both of which were harmed as a result of Mr. Ravnsborg. I began to see the in-fact damage to South Dakota that resulted from Mr. Ravnsborg’s crimes and misconduct following the crimes.

With my abundant available hours in COVID quarantine, I began to research state-level impeachment. First, I read Article XVI of our constitution several

7. Neil Vigdor, *South Dakota Attorney General Charged with Careless Driving in Man’s Death*, NY TIMES (Feb. 18, 2021), <https://perma.cc/4MTC-PUJY>; see also Complaint, South Dakota v. Ravnsborg, No. MAG21-1, 2021 WL 651372 (S.D. 6th Cir. Feb. 17, 2021) (charging the Attorney General).

8. Neil Vigdor, *South Dakota Attorney General Charged with Careless Driving in Man’s Death*, NY TIMES (Feb. 18, 2021), <https://perma.cc/4MTC-PUJY>.

9. *Id.*

10. H.R. SELECT COMM. ON INVESTIGATION, MAJORITY REPORT OF THE HOUSE SELECT COMMITTEE ON INVESTIGATION, H.R. 96th Legis., 2d Spec. Sess. (S.D. 2022), at 11-12, <https://perma.cc/7Z4Z-C244>.

times.¹¹ Then I began researching whether any of items listed as grounds for impeachment had been interpreted by our courts. Fortunately for South Dakota and unfortunately for my research, South Dakota had no precedent in the impeachment of state officials.¹²

Next, I consulted friends in the legal field and read numerous secondary sources on impeachment. The most instructive Article I read analogized the impeachment process to our criminal proceedings—adopting articles of impeachment in the House is akin to a grand jury indictment, and the impeachment trial in the Senate is like a criminal trial. After establishing that analogy, the process became reasonably clear to me.

Finally, I looked beyond our borders at impeachment in other states. My findings surprised me: impeachment of state officials is quite rare. Digging deeper, I realized what should have been obvious—state-level officials commit misconduct everywhere, but when they get caught, the vast majority acknowledge their faults, show contrition, and resign. One recent exception was in Nevada, where the Controller was convicted of campaign finance violations for improperly using state employees and equipment and refused to resign.¹³ She was impeached unanimously.¹⁴ That is a low-level crime with a very small amount of harm.

In total, my research showed that the question of an impeachable offense was not capable of a tidy black-and-white definition but, rather, depended on the facts, context, and result. Mr. Ravensborg's conduct certainly met the legal definition of an impeachable offense, so the question became whether the legislature thought impeachment was appropriate in this case. With the help of two attorney-friends, I drafted impeachment articles that could be used as a framework for any legislator that might be interested in sponsoring articles of impeachment. It is a fairly common practice in the legislature for one member to draft a bill and work out the language, even if another member would ultimately introduce the bill. I was hopeful that I could be helpful to a member willing to lead the impeachment effort.

I returned to the House from my COVID-quarantine to discuss matters with my colleagues. I approached a number of experienced colleagues about their interest in acting as prime sponsor of the articles of impeachment. Most acknowledged that we should move forward, but none were eager to attract the level of attention, scrutiny, and pressure that would come along with introducing a resolution regarding impeachment. Ultimately, it became clear that if I did not introduce the articles, no one in my party would do so.

After deciding to move forward, I alerted the Majority Leader, Kent Peterson, the Speaker of the House, Spencer Gosch, and the Minority Leader, Jamie Smith. Majority Leader Peterson and Minority Leader Smith were the sole co-sponsors

11. See S.D. CONST. art. XVI (entitled "Impeachment and Removal from Office").

12. Dunteman, *supra* note 1.

13. Susannah Rosenblatt, *State Controller Faces Senate Trial in First-Ever Impeachment in Nevada*, BALTIMORE SUN (Nov. 25, 2004, 12:00 AM), <https://perma.cc/Q4DX-C7YS.1>.

14. *Id.*

of the articles.¹⁵ Because I had no staff, I personally finalized the articles with our Legislative Research Council, drafted a press release, compiled a press list, and drafted a complete press statement. I did not really have anyone to even proofread the press materials, given the sensitivity of the topic and the documents.

I alerted all my colleagues to my decision to pursue impeachment before making the decision and articles public. When I told my colleagues, there was a fair amount of anger and uncertainty. Many of my colleagues were and are personal friends of Mr. Ravensborg. All of them knew that we would now have to learn difficult facts and make a difficult decision. On Tuesday, February 23, 2021, six weeks after taking my oath of office to begin service as a state representative, I introduced articles of impeachment against Attorney General Jason Ravensborg for his crimes and misdemeanors related to the death of Joseph Boever and his conduct during the investigation.¹⁶ That day, I sent out the press release and press statement and took questions in a press conference in the rotunda of the Capitol.

After I introduced the articles, the Governor made her position on impeachment known and released a fair amount of information from the investigation.¹⁷ I did not know that would be happening. To this day, I have never spoken with Governor Noem about the topic of impeachment. I believe her decision to release the information was a good one though. When high-ranking officials are being investigated for criminal conduct, additional transparency is appropriate. We needed to show the state that there was no cover-up and no conspiracy. I am open to suggestions about which pieces of information should have been released or retained but feel strongly that we should applaud and not fault the Governor for erring on the side of transparency with respect to this matter.

Legislative leadership decided that the question of impeachment should be reviewed by a select committee before the full House could consider it. The committee was appointed and chaired by Speaker Gosch, and I was not on the committee, despite being one of few attorneys in the House.¹⁸ The select committee did not invite investigators to present their findings but instead conducted cross-examination style questioning and critiquing of the investigative reports. The select committee never called Mr. Ravensborg to question him. The committee issued a report, adopted on party lines, that recommended against impeachment, proffering a “clear and convincing” standard for adopting articles of impeachment.¹⁹

15. *House Resolution 7001*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/5DHQ-29H7> (last visited Dec. 19, 2022).

16. H. JOURNAL, 96th Legis., Reg. Sess., Twenty-Seventh Day 381 (S.D. 2021), <https://perma.cc/57BG-DH3Q>; see also Brianna Schreurs, *Articles of Impeachment Filed Against South Dakota Attorney General Jason Ravensborg*, KEVN (Feb. 23, 2021, 2:40 PM), <https://perma.cc/75NY-YDQB> (discussing the introduction of the articles).

17. 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>.

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

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

While I was respectful of the select committee's work and report throughout the proceedings, I disagree heartily with the report. While a "clear and convincing" standard may be appropriate for the Senate's consideration of conviction, it clearly was inapplicable to the question of adopting articles for charging. Further, the committee attempted to limit the jurisdiction and authority of the legislature under Article XVI by adding additional criteria to the list of impeachable offenses set forth in the constitution.²⁰ I believed, and still believe, that impeachment is within the sound discretion of the legislature. The list of impeachable offenses is short, but the terms are fairly broad, leaving a great deal of discretion in the hands of the legislature to consider the facts, circumstances, and results of the specific offenses.

In the end, the House did not consider the question of adopting articles of impeachment until April 2022.²¹ The night before the floor debate and vote, the Attorney General sent a bizarre mass email to all members of the House, trying to make his case.²² He had not spoken to the select committee, had not provided additional information prior to that point, and never testified under oath. The email would have been strange from anyone but was particularly unusual for someone who was supposed to be our top prosecutor.

I was the sole sponsor of the resolution containing the articles of impeachment.²³ On the House floor, following another heated caucus meeting, I pitched one of the articles of impeachment (crimes) and Representative Ryan Cwach pitched one of the articles (malfeasance). The resolution passed the House of Representatives by a single vote, garnering thirty-six votes in favor, a bare majority of our seventy members.²⁴ It was the only speech I have given where my voice quaked. I knew the gravity of the question and knew the impact on our state and our institution.

I was not happy when the vote total appeared. While I was proud of the courage of my colleagues, no part of me was glad. This was a grave and tragic experience. I felt the same melancholy pride when the Senate, nearly unanimously, convicted Mr. Ravnsborg, removed him from office, and permanently barred him from holding office in South Dakota.²⁵ While the votes were challenging and emotional for all members of the legislature, I hope that our willingness to carry out the difficult task restores faith of the people in the integrity of our system.

20. See generally *id.* (containing the committee's findings and recommendations).

21. H.R. Res. 7002, 96th Legis., 2d Spec. Sess. (S.D. 2022), <https://perma.cc/K5M2-U2LN>.

22. Email from Jason Ravnsborg, South Dakota Attorney General, to Spencer Gosch, Speaker of the House, and Members of the South Dakota House of Representatives (Apr. 11, 2022), <https://perma.cc/HY9L-UW6B>.

23. *House Resolution 7002*, S.D. LEGIS. RSCH. COUNCIL, <https://perma.cc/KE3X-X92L> (last visited Dec. 19, 2022).

24. H. JOURNAL, 96th Legis., 2d Spec. Sess., Second Day 33 (S.D. 2022), <https://perma.cc/YGP4-A87C>; Hunter Dunteman, *South Dakota AG Ravnsborg Impeached on 36-31 Vote, Immediately Suspended from Duties*, MITCHELL REPUBLIC (Apr. 12, 2022, 12:44 PM), <https://perma.cc/C78N-E4FS>.

25. See Transcript of Proceedings, *supra* note 6, at 266-69, 277-88.

The events leading to impeachment were deeply tragic for all involved. The impeachment proceeding put a serious strain on our state, our law enforcement, our legislature, and the family of the victim. It was a grave and exceptional matter. I am hopeful we have seen the first and last impeachment in South Dakota history.