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IN THE MATTER OF THE IMPEACHMENT OF JASON RAVNSBORG

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On April 12, 2022, the House of Representatives voted by one vote to impeach South Dakota Attorney General Jason Ravnsborg for his actions regarding a 2020 car crash that resulted in the death of Joe Boever on the night of September 12, 2020. The South Dakota Senate on Tuesday, June 22, 2022, convicted Attorney General Jason Ravnsborg of two impeachment charges stemming from a 2020 fatal accident, removing and barring him from future office. Attorney General Ravnsborg is the first constitutional officer to have ever been impeached and convicted in South Dakota.

I was appointed by Speaker Spencer Gosch to serve as the Vice Chairman of the House Select Committee on Investigation (“Select Committee”) to investigate whether articles of impeachment against Attorney General Jason Ravnsborg should be presented to the South Dakota House of Representatives. The following only represents my opinions, observations, and legal thought process concerning this historic task. The Select Committee had a voluminous number of documents, photographs, videos, reports, and narratives and was able to personally examine witnesses at three different open meetings. The committee also received lots of input from the administration, as well as the public.

I. THE BEGINNING

The South Dakota Constitution does not set forth a procedure to follow to impeach a constitutional official. Since no constitutional officer in the state of South Dakota had ever been impeached before, there was no procedural precedent to follow either. So, where does one begin with this monumental and important task? The language in South Dakota Constitution, Article XVI, Section 3 was not

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much help. This one section of the constitution was all that was available for the Select Committee to use as it considered the possible impeachment of the South Dakota Attorney General.

The foremost thought of those serving on the Select Committee was that everyone in this tragic event was entitled to due process. The Fourteenth Amendment to the United States Constitution, Section 1 guarantees everyone “due process.”

It provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The right of due process is also guaranteed in Article VI, Section 2 of the Bill of Rights of South Dakota’s Constitution.

§ 2. Due process—Right to work. No person shall be deprived of life, liberty or property without due process of law. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization.

From the first day of law school, we were taught that due process is a requirement that legal matters should be resolved according to established rules and principles, so that all individuals are treated equally and fairly, regardless of who they are. Due process guarantees that before one can have their constitutionally protected individual rights or property taken from them, each person is entitled to a fair application of the law. Due process guarantees a fair trial before an impartial jury or judge. In a word, due process means “fairness.” Due process applies to both civil and criminal matters. Consequently, this same concept of “fairness” was applied by the Select Committee to these impeachment proceedings as well.

The Select Committee was determined to be guided by trying to be fair to all involved. In our civil and criminal practices, there are statutory procedural rules which are enforced by the judiciary to make sure that an individual is being provided due process. In an impeachment investigation, however, such safeguards are virtually nonexistent. In either a civil or criminal trial, the judiciary can protect the jury pool from improper and irrelevant information being presented, which can spoil the jury pool. That safeguard does not exist in an impeachment proceeding. In this matter, there was premature release of information and calls for the

6. S.D. CONST. art. XVI, § 3.
7. U.S. CONST. amend. XIV, § 1.
8. Id. (emphasis added).
10. Id. (emphasis added).
Attorney General’s resignation prior to the criminal investigation being completed or formal charges filed.\textsuperscript{11} Furthermore, with an impeachment proceeding, the entire state of South Dakota became the jury pool so that misinformation and rumors from many sources, each with their own motivation, unfortunately were disseminated to the public prematurely without a full disclosure.

II. IMPEACHMENT: AN EXTREME REMEDY

Impeachment has been referred to as the “political equivalent of capital punishment.”\textsuperscript{12} Impeachment, both nationally and throughout the states, has seldom been used or been successful. For example, only President Andrew Johnson, President Bill Clinton, and President Donald Trump (twice) have ever been impeached, and none have been removed.\textsuperscript{13} In South Dakota’s entire history, no constitutional officer had ever been impeached.\textsuperscript{14} The purpose of impeachment is to protect the public from further wrongs and not to punish. It is an extreme remedy since it reverses a popular election of the citizens. The “Rodino Report,” a congressional report which considered the possible impeachment of President Nixon, concluded:

impeachment is a constitutional remedy addressed to serious offenses against the system of government. . . . [Impeachment is directed to address] constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself.\textsuperscript{15}

Alexander Hamilton believed that impeachment should be used sparingly and only for those individuals who were doing wrongs that impacted the official’s office, not just any misconduct or crime. He believed it should be used for those offenses 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.\textsuperscript{16}

\textsuperscript{11} See, e.g., South Dakota Attorney General Who Hit & Killed Man Told Police He Hit a Deer, CNN (Sept. 15, 2020, 3:45 PM), https://perma.cc/T3XJ-F42C (reporting facts of what led to the impeachment of the Attorney General just days after the event occurred); Eric Mayer, Gov. Noem Calls for Ravnsborg to Resign, KELOLAND (Feb. 23, 2021), https://perma.cc/X432-SZ5Z (reporting Governor Noem’s public expression of her belief that the Attorney General should resign).

\textsuperscript{12} H. JOURNAL, 96th Legis., Reg. Sess., Twenty-Seventh Day 381 (S.D. 2021), https://perma.cc/7FHV-AVXM.


\textsuperscript{14} Dave Roos, How Many US Presidents Have Faced Impeachment?, HISTORY (Oct. 21, 2019), https://perma.cc/J8Z4-UMZT.

\textsuperscript{15} Dunteman II, supra note 3.

\textsuperscript{16} STAFF OF H.R. COMM. ON THE JUDICIARY, 93D CONG., REP. ON CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT 26 (Comm. Print 1974), https://perma.cc/F5M2-RRMX.

\textsuperscript{16} THE FEDERALIST No. 65, at 396 (Alexander Hamilton), https://perma.cc/RDD5-CFDA.
In State ex rel. Steffen v. Peterson, the South Dakota Supreme Court said that the “removal of public officers from office is a drastic remedy.”

In 2006, the Nebraska Supreme Court was asked to interpret a constitutional provision like South Dakota’s impeachment language. Ironically, it also involved impeachment proceedings brought against the Nebraska Attorney General. The decision of the Nebraska Supreme Court was that an impeachable offense must be related to the duties of the office.

An important issue in this case is what constitutes an impeachable offense. The Constitution provides that all civil officers of this State shall be liable to impeachment “for any misdemeanor in office.” We think this provision of the Constitution means that the act or omission for which an officer may be impeached and removed from office must relate to the duties of the office.

An early issue that was addressed was whether the actions of the Attorney General were related to the duties of his office. Was the Attorney General acting in his scope of duties when this death occurred after attending a Lincoln Day Dinner in Redfield, South Dakota? This was an important initial issue to be decided upon inasmuch as the grounds for impeachment in South Dakota included the phrase “in office.”

III. BURDEN OF PROOF

The Select Committee adopted the “clear and convincing” standard of proof in order to determine whether the Attorney General should be impeached. This decision was based upon the South Dakota Supreme Court decision in Steffen, which analyzed South Dakota Codified Law section 3-17-6, a statute that permits removal of local government offices for misconduct. In that case, it was held that “evidence in a removal action must be ‘clear, satisfactory and convincing.’” Clear and convincing evidence has been defined by the South Dakota Supreme Court as “evidence that is so clear, direct, weighty, and convincing as to allow the trier of fact to reach clear conviction of precise facts at issue, and without hesitancy

17. 2000 SD 39, 607 N.W.2d 262.
18. Id. ¶ 19, 607 N.W.2d at 268 (quoting Kemp v. Boyd, 275 S.E.2d 297, 301 (W. Va. 1981)).
20. Id. at 873.
21. Id. at 874.
22. Id. (emphasis added) (internal citation omitted).
23. S.D. CONST. art. XVI, § 3.
25. 607 N.W.2d at 268.
as to their truth.” 27 In Sedlacek’s Estate v. Mount Marty Hospital Association, 28 the South Dakota Supreme Court also said that the clear and convincing standard “must be more than a mere preponderance but not beyond a reasonable doubt.” 29

IV. GROUNDS FOR IMPEACHMENT

The Attorney General was charged with three misdemeanors: careless driving; 30 an illegal lane change; 31 and driving while using a cell phone. 32 All three charges were Class 2 misdemeanors. He paid a $1,000 fine after pleading no contest to the latter two crimes. 33

The Select Committee was impressed with the hard work and agreed with the conclusions of Hyde County State’s Attorney Emily Sovell and Beadle County State’s Attorney Michael Moore. They had a very difficult job to do, and they clearly took the time and made the effort to objectively evaluate all of the evidence. They did this in the face of a significant amount of political pressure that was placed upon them. The sheer amount of evidence that Ms. Sovell and Mr. Moore had to review, which was made available to the Select Committee as well, was almost overwhelming. It was their opinion, based upon their review of all the evidence, that the Attorney General was properly charged with what they could prove beyond a reasonable doubt. 34 They did not believe that they could have charged the Attorney General with a more serious charge.

An argument was made by those wanting the Attorney General to resign that he should have been charged with second degree manslaughter, which is a Class 4 felony. 35 That statute states as follows:

Any reckless killing of one human being, including an unborn child, by the act or procurement of another which, under the provisions of this chapter, is neither murder nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree. Manslaughter in the second degree is a Class 4 felony.” 36

The prosecutors did not believe that they would have been able to convict the Attorney General for this crime because there was insufficient evidence that this death constituted a “reckless killing” of another human being. The key word was “reckless” which is defined in South Dakota Codified Law section 22-1-2(1)(d) as

28. 218 N.W.2d 875 (S.D. 1974).
29. Id. at 879.
34. See Neil Vigdor, South Dakota Attorney General Charged with Careless Driving in Man’s Death, NY TIMES (Feb. 18, 2021), https://perma.cc/4MTC-PUJY.
36. Id.
“conscious and unjustifiable disregard of a substantial risk that the offenders conduct may cause a certain result or may be of a certain nature.”

The South Dakota Supreme Court had previously analyzed the recklessness standard in a criminal case involving Representative William Janklow. William Janklow was charged with failure to stop at a stop sign, reckless driving, and second degree manslaughter. The legal question presented on appeal to the South Dakota Supreme Court was whether William Janklow’s conduct was “reckless” as it related to the second degree manslaughter charge. The supreme court held that for someone’s conduct to be considered “reckless,” that person “must consciously disregard a substantial risk. Recklessness requires more than ordinary negligent conduct.” The supreme court went on to further distinguish reckless behavior and negligent behavior, to wit:

The difference between the terms “recklessly” and “negligently,” as usually defined, is one of kind, rather than degree. Each actor creates a risk of harm. The reckless actor is aware of the risk and disregards it; the negligent actor is not aware of the risk but should have been aware of it. The supreme court went on to hold that the mere fact that someone was killed does not mean that the person was reckless.

However, the operation of a motor vehicle in violation of the law is not in and of itself sufficient to constitute reckless conduct, even if a person is killed as a result thereof. Criminal responsibility for death resulting from the operation of a motor vehicle in violation of the law will result only if the violation is done in such a manner as to evidence a reckless disregard for the safety of others. Mere carelessness or inadvertence or thoughtless omission is insufficient.

As a result of this case decision, I agreed with the prosecutors that there was no evidence to support the Attorney General being charged with manslaughter in the second degree, let alone being convicted. When a person consciously runs a stop sign, they are aware of the risk, yet disregards that risk. When a person’s automobile drifts to the side of the road, late at night, they do not anticipate someone walking along the side of the road miles from town. That behavior does not constitute “a reckless disregard for the safety of others.”

The grounds for impeachment are set forth in South Dakota Constitution, Article XVI, Section 3, which states as follows:

39. Id. ¶ 5, 693 N.W.2d at 691.
40. Id. ¶ 1, 693 N.W.2d at 690.
41. Id. ¶ 19, 693 N.W.2d at 693 (quoting State v. Olsen, 462 N.W.2d 474, 476 (S.D. 1990)).
42. Id. ¶ 19, 693 N.W.2d at 693-94 (quoting State v. Larson, 1998 SD 80, ¶ 14, 582 N.W.2d 15, 18).
43. Id. ¶ 20, 693 N.W.2d at 694 (quoting Olsen, 462 N.W.2d at 477).
44. See id.
The Governor and other state and judicial officers, except county judges, justices of peace and police magistrates, shall be liable to impeachment for drunkness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but 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. The person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to the law.\textsuperscript{45}

In 1898 in \textit{State ex rel. Ayers v. Kipp},\textsuperscript{46} the South Dakota Supreme Court held that Article XVI, Section 3 applied to all state officials who are named in the South Dakota Constitution, such as the Attorney General.\textsuperscript{47}

The Select Committee then considered the only four grounds for impeachment.

1. **Drunkenness.** The Attorney General was not charged with driving while intoxicated. In fact, there was no evidence, whatsoever, that he had been drinking any alcoholic beverages the night of the event. The toxicology report was negative.\textsuperscript{48}

2. **Crimes.** The Attorney General was convicted of two Class 2 misdemeanors. As to the crime of using a cellphone while driving, the clear evidence was that the Attorney General was not using his cell phone at the time of the accident nor was it an event by virtue of his office. As to the lane violation, that is a commonplace occurrence. Both Class 2 misdemeanors can be dangerous; however, I did not believe that Class 2 misdemeanors should be the basis for removing an official from office under Article XVI, Section 3 and subject to such “drastic remedy.”\textsuperscript{49} Does that mean in the future that this will be the threshold and standard as to what constitutes impeachable offenses?

3. **Corrupt Conduct.** The Select Committee had no case law to use which defined what “corrupt conduct” consisted of. As to this impeachable offense, the committee considered all the allegations, which included whether the Attorney General misrepresented his cell phone usage; the positioning of the Attorney General’s vehicle; whether facts were misrepresented; the dissemination of a press release regarding the accident on official Attorney General letterhead; and whether the Attorney General asking what could be found on his cell phone was corrupt action. Although many investigators had an opinion about whether the Attorney General may not have been totally truthful, none of these individuals were able to prove any of these allegations. The Select Committee did not find by clear and

\textsuperscript{45} S.D. CONST. art. XVI, § 3.

\textsuperscript{46} 74 N.W. 440 (S.D. 1898).

\textsuperscript{47} \textit{Id.} at 442.


convincing evidence that the Attorney General had been in corrupt conduct while “in office.”

4. Malfeasance in Office. What is the definition of “malfeasance in office?” In Steffen, the South Dakota Supreme Court said that it “is not susceptible of an exact definition but it has ‘reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful.’” To be guilty of “malfeasance in office,” acts must have been done (a) knowingly; (b) willfully; and (c) with an evil or corrupt motive and purpose. The South Dakota Supreme Court went on to further say, “There is no man in official position so letter perfect in the law that he does not at some point by act or omission or misconstruction of the law, though with perfect integrity of motive, fall short of the strict statutory measure of his official duty.” Thus, it takes more than a mere mistake, poor judgment, or incompetence to have committed “malfeasance in office.” The Select Committee did not find that there was any malfeasance in office by the Attorney General.

5. Misdemeanor in Office. Once again, the Select Committee did not have any South Dakota case law or other statutory direction as to what constitutes “misdemeanor in office.” It seems to be a term of art inasmuch if it merely referred to a “misdemeanor” as we know of it today. There would be no use to list this as an impeachable offense when “crime” has already been listed as an impeachable offense. In Black’s Law Dictionary, it notes that in 1911 the term “abuse of public office” was defined as “a public servant’s tortious or criminal use of governmental position for private gain.” Clearly no one accused any of the Attorney General’s acts of constituting use of a governmental position for “private gain.”

V. CONCLUSION

The purpose of the Select Committee was to “investigate and evaluate whether the conduct of Jason Ravnsborg, Attorney General of the State of South Dakota, surrounding the death of Joe Boever, involved impeachable offenses, pursuant to Article XVI, Section 3 of the Constitution of the State of South Dakota.” It was not to judge whether the Attorney General was doing a good

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51. Steffen, 2000 SD 39, ¶ 19, 607 N.W.2d at 268-69 (quoting Claude v. Collins, 518 N.W.2d 836, 842 (Minn. 1994)).
52. See id. ¶ 21, 607 N.W.2d at 269 (quoting State v. Manning, 259 N.W. 213, 215-16 (Iowa 1935)).
53. Id. ¶ 23, 607 N.W.2d at 270 (quoting State ex rel. Crowder v. Smith, 4 N.W.2d 267, 271 (S.D. 1942)).
56. Senator Lee Schoenbeck, Senate President pro tempore, & Representative Spencer Gosch, Speaker of the House, Proclamation Convening the Legislature in Special Session on November 9 (Sept.
job; whether you liked the Attorney General; nor to determine how many traffic tickets the Attorney General had; nor whether the Attorney General should have taken a leave of absence during the criminal investigation; whether the Attorney General should have showed up at his sentencing; whether the Attorney General should have taken a polygraph test (which he agreed to do, but the investigators changed their mind); or for any other reason not related to any of the four impeachable offenses. The sole purpose of the Select Committee was very clear—did the Attorney General commit an impeachable offense.

After reviewing all of the records; listening to all of the testimony; and excluding all of the political rhetoric, I did not believe that by clear and convincing evidence the Attorney General had committed acts that required the drastic remedy of impeachment.

My legal conclusion, and ultimately my vote that the actions of the Attorney General did not constitute an impeachable offense, does not reflect upon, nor criticize, any other member of the legislature and their respective votes or opinions. I want to thank Select Committee Attorney Sara Frankenstein for her assistance throughout the impeachment process. She and her staff did extensive legal research that she supplied to the Select Committee, which I have relied upon and used, in some instances in verbatim, throughout this article. Sometimes you just can’t say it any better.