

Majority Report of the House Select Committee on Investigation



2021 Second Special Session

March 28, 2022



SOUTH DAKOTA HOUSE OF REPRESENTATIVES

IN THE MATTER OF)
THE INVESTIGATION) **HOUSE SELECT COMMITTEE’S**
OF THE CONDUCT OF) **MAJORITY REPORT**
Jason Ravnsborg, Attorney General) **AND RECOMMENDATIONS**
of the State of South Dakota)

BACKGROUND

House Resolution 7001 established a select committee to investigate whether articles of impeachment should issue against Jason Ravnsborg, Attorney General of the State of South Dakota. The Attorney General of the State of South Dakota is a state officer subject to impeachment pursuant to S.D. Const. Art. XVI, § 3. The power of impeachment is exercisable only on certain grounds enumerated in S.D. Const. Art. XVI, § 3. The House of Representatives has the sole power of impeachment pursuant to S.D. Const. Art. XVI § 1. The Senate has the sole power to try an impeachment pursuant to S.D. Const. Art. XVI § 2. House Resolution 7001 requires the House of Representatives of the Legislature of the State of South Dakota to convene for the Special Session on the Impeachment of Jason Ravnsborg, Attorney General of the State of South Dakota, surrounding the death of Joe Boever, and to investigate impeachable offenses pursuant to S.D. Const. Art. XVI § 3.

In accordance with House Resolution 7001, the Select Committee has the authority to administer oaths, examine all records, summon witnesses by issuing subpoenas, and thoroughly examine all relevant and material facts associated with the events and conduct of Jason Ravnsborg, Attorney General of the State of South Dakota, surrounding the death of Joe Boever. House Resolution 7001 (2021 Second Special Session). The Select Committee is further empowered to do all other things necessary to accomplish the purpose of its hearings and deliberations. *Id.*

The Select Committee provides this written committee report and recommendation to the House of Representatives pursuant to House Resolution 7001 on whether articles of impeachment should issue.

FINDINGS OF FACT

The Select Committee issued subpoenas as follows:

1. Subpoena Duces Tecum to North Dakota Bureau of Criminal Investigation to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 12, 2022.
2. Subpoena Duces Tecum to John Daily, Jackson Hole Scientific Investigations, Inc. to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received response to subpoena via email correspondence from Attorney Paul Bachand dated January 5, 2022, attaching Mr. Daily’s contract with the State of South Dakota.

3. Subpoena Duces Tecum to Hyde County States Attorney to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 13, 2022.
4. Subpoena Duces Tecum to Craig Price, Secretary of South Dakota Department of Public Safety, to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 12, 2022.

Attached as Exhibit A is the Index of the Investigative File and List of Redacted Content. The Index reflects information received via the subpoenas noted above and other information gathered or received.

The Select Committee issued the following subpoenas for live testimony:

1. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Craig Price, Secretary of South Dakota Department of Public Safety, dated January 4, 2022;
2. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Trooper John Berndt, South Dakota Highway Patrol, dated January 4, 2022;
3. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Jeramie Quam, North Dakota Bureau of Criminal Investigation, dated January 4, 2002;
4. Subpoena to Appear and Testify at Hearing on January 19, 2022, to John Daily, Jackson Hole Scientific Investigation, Inc., dated January 4, 2022;
5. Subpoena to Appear and Testify at Hearing on January 19, 2022, to Joe Arenz, North Dakota Bureau of Criminal Investigation, dated January 4, 2022;
6. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Emily Sovell, Hyde County State's Attorney, dated February 10, 2022;
7. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Timothy Bormann, South Dakota Attorney General's Office, dated February 10, 2022;
8. Subpoena to Appear and Testify at Hearing on February 24, 2022, to David Natvig, Division of Criminal Investigation, dated February 10, 2022;
9. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Michael Moore, Beadle County State's Attorney, dated February 10, 2022.

The Select Committee also received or gathered the following documents, reflected in Exhibit A:

1. Documents published on the South Dakota Department of Public Safety Website (Exhibit A, No. 67);
2. Attorney General Jason Ravnsborg letter regarding September 12, 2020 accident (Exhibit A, No. 68);
3. Letter from attorney Ross Garber submitted on behalf of Attorney General Ravnsborg, dated January 27, 2022 (Exhibit A, No. 71);
4. Press Release from Department of Public Safety Secretary Craig Price Urging Committee to Consider Facts in Impeachment Investigation, dated March 9, 2022 (Exhibit A, No. 73);
5. Secretary Craig Price letter to Speaker Gosch, dated March 9, 2022 (Exhibit A, No. 73);

6. AG Crash Supplemental (Quadrants Described) from Trooper John Berndt, dated March 9, 2022 (Exhibit A, No. 73).

The Select Committee submitted numerous requests, both formal and informal, to Attorney General Ravensborg and his legal team seeking his participation in the impeachment process. The Committee offered the Attorney General an opportunity to testify and/or to submit any factual or legal argument. The only information provided was a letter penned by Attorney Ross Garber on Attorney General Ravensborg's behalf. (Exhibit A, No. 71).

Additionally, the Select Committee gave Attorney General Ravensborg and his legal counsel notice that it intended to release a redacted version of the investigative file. The Attorney General and his team had months to review the redacted file and provide any feedback. Unlike in the criminal case where Ravensborg's counsel objected to the release of the initial investigation report, the Select Committee received no objection to the release of the redacted full investigative file.

The Select Committee held three days of evidentiary hearings on January 18, January 19, and February 24, 2022. The witnesses were each sworn under oath by the Chair prior to their testimony. Each was asked if the Attorney General or anyone on his behalf in any way contacted them to influence the investigation. All answered no.

The testimony and other documents and information relevant to potentially impeachable offenses reflect the following.

Attorney General Jason Ravensborg attended a Lincoln Day Dinner in Redfield, South Dakota, on September 12, 2020. He attended this political function in his personal capacity as a candidate and not as a duty of his office. He consumed no alcohol that day. While he drove back to Pierre that evening, he spent approximately 69% of his time on his cell phone. His phone was locked prior to entering the town of Highmore, and he did not use his phone again until he called 911 after the accident on the west side of Highmore. A forensic study of his two cell phones confirmed that Attorney General Ravensborg was not on a cell phone at the time or approximately 90 seconds preceding the accident. In response to questions regarding whether Attorney General Ravensborg was obviously distracted, prosecutor Michael Moore said, "I guess I don't agree with the fact that he was obviously distracted. People drive outside a lane for a variety of different reasons and it doesn't mean they're distracted."

Approximately a mile west of Highmore, South Dakota, Attorney General Ravensborg stated he began to accelerate in speed and looked down to set the cruise control. It appears that his vehicle may have left his lane of travel and drifted to the right onto the shoulder where he struck and killed Joe Boever. The South Dakota Highway Patrol concluded that all four tires of the vehicle were on the shoulder of the road, to the right of the fog line, and the point of impact was a foot from the ditch. This conclusion was disputed by Attorney General Ravensborg's statements and appeared to have been called into doubt by Mr. Boever's bone scrape located to the north of the fog line, but close to the lane of traffic. No sufficient explanation has been provided to the Select Committee explaining how Mr. Boever's bone fragments were left so close to the lane of travel, but the Highway Patrol concluded Mr. Boever was struck nearly on the grass line. No evidence indicated Mr. Boever's body traveled under the vehicle, and no evidence supported that his body was vaulted over the top of the vehicle. Rather, all evidence suggests Mr. Boever's face went through the windshield; and the body slid off the right side of the car, taking the passenger side-view mirror nearly off the vehicle. Some testimony regarding the vehicle's paint chips and other

fragments of the vehicle stated the vehicle was fully within the shoulder at the point of impact. However, the prosecutors involved believed the evidence was disputed as to how far into the shoulder the vehicle was at the time of impact. Tire marks previously associated with this accident by the media were determined not to be associated with this accident by law enforcement.

After the impact, Attorney General Ravnsborg pulled his car over and called 911. (Exhibit A, No. 58, p. 35 of SD Highway Patrol Report.) Hyde County Sheriff Michael Volek responded to the call, and both Sheriff Volek and Attorney General Ravnsborg looked in the surrounding ditches to see what had been hit. Both indicated they did not see Mr. Boever's body, which was in the grass a short distance from the road. Sheriff Volek allowed Attorney General Ravnsborg to take his personal vehicle home to Pierre, and called a tow truck to transport Attorney General Ravnsborg's vehicle to Highmore.

The next morning, September 13, 2020, Attorney General Ravnsborg and his Chief of Staff, Tim Bormann, returned to the accident scene before returning Sheriff Volek's vehicle. Each began to search the area, and Attorney General Ravnsborg found Mr. Boever's dead body. He alerted Chief of Staff Tim Bormann to come over to the location of the body. They then drove to Sheriff Volek's house and reported the body. Sheriff Volek thereafter reported the body to the South Dakota Division of Criminal Investigation (DCI). DCI reports directly to the South Dakota Attorney General. The South Dakota Highway Patrol requested the North Dakota Bureau of Criminal Investigation (BCI) assist with the investigation due to the conflict of having DCI involved. The South Dakota Highway Patrol reconstructed the crash, while the North Dakota BCI collected the evidence and primarily interviewed the witnesses.

North Dakota BCI Special Agent Joe Arenz and North Dakota BCI Supervisory Special Agent Arnie Rummel interviewed Attorney General Ravnsborg on September 14, 2020 and September 30, 2020.¹ (Exhibit A, No. 44). During the first interview, Attorney General Ravnsborg stated, "I never saw anything until the impact." Some have alleged that this statement suggests that Attorney General Ravnsborg saw he hit a person at the time of impact. During the second interview, Attorney General Ravnsborg stated, "You know I'm walking and looking to try and see that sign to make sure that's the, and then I turn around and I'm looking into the ditch so I don't know exactly where I turn around and saw him. I-I didn't see him. I did not see him." Some have alleged that this statement suggests Attorney General Ravnsborg saw the body in the ditch as he walked to view the Highmore sign. Attorney General Ravnsborg also may have simply misspoke, as he corrected his statement later in the interviews.

On September 15, 2020, Attorney General Ravnsborg spoke to DCI Special Agent Brent Gromer in Pierre at the DCI Headquarters. (Exhibit A, No. 29). Attorney General Ravnsborg asked Special Agent Gromer about digital forensics and what information the North Dakota BCI may be able to obtain from his cell phones. These questions made Special Agent Gromer uncomfortable and caused him to type a statement about the interaction.

Attorney General Ravnsborg issued a public statement regarding the accident on his official Attorney General letterhead. (Exhibit A, No. 68).

At Attorney General Ravnsborg's second interview on September 30, 2020, he was questioned regarding his phone use the evening of the accident. (Exhibit A, No. 44).

¹ There is a transcription error on Exhibit A, No. 44, which lists the date of the second interview as October 30, 2020.

Attorney General Ravensborg was charged with three class two misdemeanors, pleading no contest to two of them as discussed below. Prosecutors determined there was insufficient evidence to charge any more serious offenses. The Select Committee considered all other possible charges. Attorney General Ravensborg was not charged with any crime related to obstructing or lying to law enforcement.

Chief of Staff Tim Bormann testified that there has been no disruption in the Attorney General's Office due to the accident. No evidence indicated Attorney General Ravensborg abused his power of office.

LEGAL ANALYSIS

I. South Dakota Constitution

The impeachment and removal provisions found in the South Dakota Constitution state as follows:

Article XVI

§ 3. Officers subject to impeachment—Grounds—Removal from office—Criminal prosecution.

The Governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for drunkenness, 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.

§ 4. Removals of officers not subject to impeachment.

All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by law.

Section 3 applies to state officials who are named in the South Dakota Constitution, such as the Attorney General. *State ex rel. Ayers v. Kipp*, 74 N.W. 440, 442 (S.D. 1898) (In § 3, the framers "were . . . providing for the tenure of the state officers they have created and named in the constitution, and that they did not include or intend to include officers created by the legislature."). While § 4 does not apply here, South Dakota Supreme Court case law provides insight as to the framers' intent and the meaning of language used in both §§ 3 and 4.

State officers not subject to impeachment may only be removed from office for the reasons provided in the constitution. "By expressly enumerating the causes for which such an officer may be removed, the constitution not only limits the causes, but limits removals to cases where such causes exist. We must not be understood as saying or meaning that such cause must first be judicially declared to exist before any power of removal can be exercised, but we do mean to say that the constitution plainly and unmistakably does forbid the removal of such an officer at the pleasure of anybody, whether governor, legislature, or court." *State ex rel. Holmes v. Shannon*, 64 N.W. 175, 179 (S.D. 1895).

II. Standard of Proof – Clear and Convincing

In *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268 (S.D. 2000) the South Dakota Supreme Court analyzed SDCL § 3-17-6, the statute that permits removal of local government officers for misconduct.

Quoting the Iowa Supreme Court, the South Dakota Supreme Court held that “[e]vidence in a removal action must be ‘clear, satisfactory and convincing.’” *Id.* (citing *State v. Bartz*, 224 N.W.2d 632, 638 (Iowa 1974)). The South Dakota Supreme Court has previously defined “clear and convincing evidence” 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, without hesitancy as to their truth.” *Matter of S.W.*, 428 N.W.2d 521, 523–24 (S.D. 1988). The clear and convincing standard “must be more than a mere preponderance but not beyond a reasonable doubt.” *Sedlacek’s Estate v. Mount Marty Hospital Ass’n*, 218 N.W.2d 875, 879 (S.D. 1974).

The Select Committee on Investigation hereby adopts the clear and convincing standard of proof for determining if articles of impeachment should issue.

1. Misconduct defined

Of the terms listed in § 4, two terms -- misconduct in office and malfeasance in office -- have been expressly defined by the South Dakota Supreme Court in the context of removal from office under § 4. The term “misconduct . . . in office”, a basis for removal of officers not subject to impeachment, has been defined as “simply the doing of something which the officer ought not to do, or the failure to do something which he ought to do, in the conduct of his office.” *Craig v. Jensen*, 278 N.W. 545, 549 (S.D. 1938). The South Dakota Supreme Court noted that “[e]ach case must rest upon its own facts.” *Id.*

2. Malfeasance defined

In 2000, the South Dakota Supreme Court adopted the Minnesota Supreme Court’s definition of malfeasance, explaining 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.” *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000) (internal citations omitted). In 1914, the South Dakota Supreme Court explained that “[f]or an officer to be mistaken in his construction of a law comes far from corruption or malfeasance in office. If [the complainant] had charged that [the officer] insisted on the 33 ½ per cent. [above cost for the sale of school books] when he knew that the law provided for only 10 per cent. there would have been a charge of malfeasance in office.” *Howe v. Thompson*, 150 N.W. 301, 303 (S.D. 1914).²

III. Impeachment likely limited to criminal conduct

The South Dakota Supreme Court has provided a potential distinction between conduct that may be the basis for an impeachment under § 3 and conduct that may subject a non-constitutional state officer to removal under § 4. Non-constitutional state officers may be removed for non-criminal conduct including “incompetency, and perhaps other causes not constituting criminal offenses.” *State ex rel. Hitchcock v. Hewitt*, 52 N.W. 875, 879 (S.D. 1892). For constitutional state officers, the South Dakota Supreme Court explained that “[i]n nearly every state constitution, as in the federal constitution, the causes for which a public officer may be impeached are criminal offenses only. This may be as far as it is prudent to go in the case of the heads of distinct departments of the government . . .” *State ex rel. Hitchcock v. Hewitt*, 52 N.W. 875, 879 (S.D. 1892). This statement from the South Dakota Supreme Court is a summary of many state constitutions and the federal Constitution, but it is not clear whether the Court was also referencing the South Dakota Constitution. Regardless, the quote demonstrates that in 1892, the South Dakota Supreme

² In the same case, the Court found statements alleging “neglect of official duties, with incompetency in office, and with malfeasance in office” when the statements “were made maliciously and with knowledge of their falsity” is libelous per se. *Howe v. Thompson*, 150 NW. 301, 304 (S.D. 1914).

Court at least generally believed that impeachment was for criminal conduct. This interpretation aligns with the constitutional bases for removal under impeachment -- “drunkenness,”³ “crimes,” “corrupt conduct,” “malfeasance” and “misdemeanor” – all terms that likely refer to criminal conduct.

IV. Other state statutes regarding removal of local officials

Some guidance can be gleaned from statutes governing the removal of other elected or appointed officials. Under SDCL § 3-17-6 pertaining to local governmental officials, “Any officer of any local unit of government may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality.” In discussing removal of local officials under this statute, the South Dakota Supreme Court explained that “[r]emoval of public officers from office is a drastic remedy . . . and statutory provisions prescribing the grounds for removal are strictly construed.” *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268 (S.D. 2000) (quoting *Kemp v. Boyd*, 275 S.E. 2d 297, 301 (W. Va. 1981)). “The remedy provided by removal statutes is heroic in nature and relatively drastic where the usual method of removing officeholders is by resort to the ballot.” *Id.* (citing *State v. Bartz*, 224 N.W.2d 632, 638 (Iowa 1974)). Evidence prompting removal “must be ‘clear, satisfactory and convincing.’” *Id.* (citing *Bartz*, 224 N.W.2d at 637).

V. Statutory Interpretation

“It is also a cardinal principle of statutory construction that, to ascertain the meaning of a doubtful phrase or provision, other parts of the same law may and should be considered, and that words and phrases repeatedly used in the same statute will bear the same meaning throughout, unless a different intention clearly appears.” *State ex rel. Holmes v. Shannon*, 64 N.W. 175, 176 (S.D. 1895) (case discussing impeachment).

The South Dakota Supreme Court has held that “[w]here the meaning of a constitutional provision is unclear, it is appropriate to look at the intent of the drafting bodies[.]” *Doe v. Nelson*, 680 N.W.2d 302, 305–06 (S.D. 2004) (citing *Pitts v. Larson*, 638 N.W.2d 254, 260 (S.D. 2001) (Gilbertson, C.J., dissenting); *Poppen*, 520 N.W.2d 238, 242 (S.D. 1994); *Cummings v. Mickelson*, 495 N.W.2d 493, 499 (S.D.1993)). “The ‘historical context’ of a constitutional provision is a guide to its interpretation. *Id.* (citing *Cleveland v. BDL Enterprises, Inc.*, 663 N.W.2d 212, 223 (S.D. 2003)).

It is clear that malfeasance or misdemeanors committed by the constitutional state officer in office are impeachable offenses. Art. XVI, § 3 (“state and judicial officers . . . shall be liable to impeachment for . . . malfeasance or misdemeanor in office”). The question is whether drunkenness, crimes, or corrupt conduct

³ While drunkenness itself was not a crime at the time the constitution was adopted, the question of prohibition was intensely debated during the constitutional debates and the constitution was amended to include prohibition the same day the constitution itself was ratified. Garry, Patrick, *History of the 1889 South Dakota Constitution*, 59 S.D. L.R. 14, 28 (2014) (“Prohibition and women’s suffrage were perhaps the most troublesome issues arising during the 1885 convention. But as in the 1883 convention, statehood leaders consistently worked to avoid including a prohibition provision in the constitution and, insisting that statehood must come first, called on temperance advocates to save their energy for a legislative battle once statehood was achieved.”). In 1889, when the constitution was submitted to the voters after South Dakota was granted statehood, residents voted to ratify the constitution and separately voted to amend the constitution to include prohibition. *Id.* at 32.

must be committed *in office* to be impeachable offenses. There are two ways to analyze this provision, which leads to two separate perspectives.

The first perspective compares how § 3 and § 4 are written. Section 3 subjects officials to impeachment “for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office”, while § 4 subjects officials to impeachment “for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency.” In § 4, the terms “drunkenness” and “gross incompetency” come after the term “in office”, demonstrating that an individual may be removed from office for drunkenness or gross incompetency outside their official role, but only for “misconduct or malfeasance or crime or misdemeanor” if in office, that is, in their capacity as a state official. Applying the statutory construction principle from *Holmes v. Shannon*, the drafters of the constitution could have written the provisions of § 3 to clearly indicate that out-of-office conduct subjects an individual to impeachment. But they did not. All conduct in § 3 is listed prior to the term “in office.” Therefore, a state constitutional officer must have committed drunkenness, crimes, corrupt conduct, malfeasance or misdemeanor *in office*.

The second way to read this phrase focuses on the use of commas and the double use of the word “or.” Section 3 provides removal “for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office.” There is a final comma after the term “corrupt conduct” making “malfeasance or misdemeanor in office” its own independent phrase and making “drunkenness”, “crime”, and “corrupt conduct” impeachable regardless of whether they occurred in office. When analyzing an ambiguous trailing modifier, the “typical” canons applicable are the Last Antecedent Canon or the Series-Qualifier Canon. *Argus Leader Media v. Hogstad*, 902 N.W.2d 778, 781 (S.D. 2017). The Last Antecedent Canon states the modifier (here, the phrase “in office”) only modifies the final words “malfeasance or misdemeanor.” The Series-Qualifier Canon would modify all preceding terms -- here, “drunkenness,” “crimes,” “corrupt conduct” and “malfeasance or misdemeanor.” The Series-Qualifier Canon is “highly sensitive to context.” *Id.* Unfortunately, context alone is insufficient to determine if the Last Antecedent Canon or Series-Qualifier Canon would apply because both would result in a reasonable reading of the language. Therefore, these two canons are not particularly useful to the analysis.

Regardless of the importance of punctuation, the South Dakota Supreme Court has held that “[g]rammatical rules can be overcome by other textual indications of meaning [because] [g]rammatical usage is one of the means (though not the exclusive means) by which the sense of a statute is conveyed.” *Id.* at 782 (internal citation omitted). Contextual canons, specifically the whole-text canon, require that “the intent must be determined from the statute as a whole, as well as enactments relating to the same subject. In construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result.” *Id.* (internal citations omitted). It is reasonable to argue that the drafters of the constitution intentionally placed the commas and the double use of the word “or” resulting in a reading of the text so that “in office” only applies to malfeasance or misdemeanor. This reading ensures the first “or” is not surplusage. If the drafters intended the term “in office” to apply to all of the previous terms, they could have replaced the first “or” with a comma to read “drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office” rather than what they did write -- “drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office.” Lending credence to this reading of the phrase, Black’s Law Dictionary notes that the term “abuse of public office” in 1911 was also known as “malfeasance in office.” Abuse of Public Office, Black’s Law Dictionary (11th edition). “Official misconduct” in 1830 was also known as “misconduct in office” or “misdemeanor in office.” Misconduct, Black’s Law Dictionary (11th edition). While this reading creates a question about the difference between the terms “misconduct in office” versus “misdemeanor in office” because both terms are in § 4, it lends credence to the possibility that the term “in office” only modifies “misdemeanor” and “malfeasance”.

There is a paucity of legal authority defining the term “misdemeanor in office.” The Florida Supreme Court defined the term “misdemeanor in office” as “any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office.” *In re Investigation of Cir. Judge of Eleventh Jud. Cir. of Fla.*, 93 So. 2d 601, 605–06 (Fla. 1957). Even though the definition may hold little weight in South Dakota because the Florida Supreme Court found that “misdemeanor in office is synonymous with misconduct in office,”⁴ at least one court has recognized that the phrase “misdemeanor in office” is a term of art such that “in office” is not a trailing modifier for an entire phrase. *Id.*

VI. Other State Constitutions

The South Dakota Constitution, first drafted in 1883 and later re-drafted in 1885 and then again in 1889 when it was ratified as the state (and not territorial) constitution, “borrowed heavily from existing state constitutions of the more eastern states.” Garry, Patrick, *The South Dakota State Constitution* 18 (2014). The drafting committee “declared that the document had ‘no claims to originality’ and was ‘a compilation of the best sections of all constitutions of the several states.’” *Id.* at 18, 21; Gilbertson, J. David and Barari, David, *Indexing the South Dakota Constitutional Conventions: A 21st Century Solution to a 125 Year Old Problem*, 53 S.D. L. Rev. 260, 263 (2008). Law Professor Patrick Garry, author of a book discussing the history of the South Dakota Constitution, explained that state constitutions “most often cited or used as examples” were Illinois, Pennsylvania, New York, Wisconsin, Minnesota, and California. Garry, at 27. Despite this, North Dakota’s impeachment language is closest to South Dakota’s language. North Dakota’s constitution requires that state officials “shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state.” N.D. Constitution, Art. 11, § 10. Unfortunately, there is no case law interpreting the language of North Dakota’s constitution.

While an analysis of the categories of behavior that subject a constitutional state official to impeachment provides an important framework, it is the function of the Legislature to determine if an official’s conduct should result in impeachment. The Arizona Supreme Court has held that “[w]hat constitutes ‘high crimes, misdemeanors or malfeasance’ is not to be determined by our inquiry, for the impeachment process is designed as a legislative ‘inquest into the conduct of public men.’” *Mechem v. Arizona House of Representatives*, 782 P.2d 1160, 1161 (1989) (quoting *The Federalist* No. 65).

VII. Impeachment History in South Dakota

While South Dakota has seen no impeachment inquiries for state-wide officials, a South Dakota judge was the subject of an impeachment inquiry in January of 1917. At that time, F.M. Lockhart submitted an affidavit and exhibits to the South Dakota House of Representatives and asked the House of Representatives to impeach Circuit Court Judge Levi McGee for the subornation of perjury. House Journal, p. 225–230. Essentially, F.M. Lockhart alleged that Judge McGee falsely informed Williard Richards, an employee of The Dakota Power Company, that he had purchased the water rights belonging to the Rapid River Light, Power and Transit Company. At Judge McGee’s direction, Williard Richards copied a survey of land rights owned by the Rapid River Light, Power and Transit Company, but omitted the company’s name

⁴ In South Dakota, the term “misconduct in office” is used in § 4 but not § 3. Also, § 4 lists “misconduct” and “misdemeanor” in office as separate terms. In order to avoid surplusage, the South Dakota Supreme Court might disagree with the Florida Supreme Court and find that the terms misconduct and misdemeanor in office are two separate standards.

because Judge McGee stated he now owned the rights to the land. Richards signed his name to the document, testifying to its veracity. The alleged subornation of perjury occurred in May 1908.

The petition was referred to the “Committee on Judiciary for their action and recommendation.” *Id.* Thereafter, the Judiciary Committee subpoenaed witnesses and documents and received testimony under oath as part of its investigation. Then, the Committee sent two reports to the full House. The Majority Report recommended against impeachment and the Minority Report recommended the House, as a whole, take additional testimony. (House Journal, p. 323–25).

The Majority Report determined that the evidence demonstrated that Judge McGee did not have any rights to the land and that Richards did prepare a blueprint from the Rapid River Power, Light and Transit Company map without including their name on the map. However, there was also uncertainty as to the true ownership of the water rights and significant time had passed since the incident occurred. As such, the majority stated, “[T]here is not sufficient evidence before this committee to warrant it in concluding that the accused, directly or indirectly, procured the said Richards to so make such certificate, or to swear to the same.” *Id.* Concluding there is insufficient evidence “tending to show any irregularity or corrupt conduct upon which any impeachment charges could be predicate,” the majority recommended that articles of impeachment not be preferred against the accused.

The Minority Report concluded there was insufficient information to reach a decision and recommended considering additional evidence with the full House. *Id.*

On January 29, 1917, the House voted on both the Majority and Minority Reports. The Minority Report was rejected 23-75. (House Journal, p. 342–43). The committee’s Majority Report was adopted and no record vote was taken. *Id.*

Between January and March, 1917, the House and Senate passed HB 407. The bill authorized the State Auditor to pay \$64.30 to two witnesses (James Hartgering and Willard Richards) and a third party (C.M. Cessna) for the costs of impeachment. (Session Laws, p. 85–86).

The House Journal does not state whether the Judiciary Committee’s investigation meetings were public or held in closed session. However, none of the newspapers that reported on the impeachment included details of the committee hearings, supporting the conclusion that the committee meetings were not public. Further, the Minority Report recommended “that the House sit *in closed session* for the purpose of considering the evidence already produced, and any other evidence that may be produced, before taking final action upon said charges.” (House Journal, p. 325 (emphasis added)).

VII. Findings of the Select Committee

The Select Committee was tasked with determining which constitutional standard, if any, may apply to a potential impeachment in this matter. Those constitutional standards are drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office. Next, the Select Committee determined whether any of Attorney General Ravensborg’s actions or omissions surrounding the death of Joe Boever support any such constitutional standard for impeachment. The Select Committee on Investigation analyzed the following under the clear and convincing standard of proof as stated above for determining if articles of impeachment should issue:

A. Drunkenness: The toxicology report and other evidence indicate Attorney General Ravensborg was not intoxicated at the time of the accident.

B. Crimes: To impeach for “crimes”, the House may consider whether the official was convicted of a crime or whether the official committed a crime but his behavior did not result in a criminal charge and

conviction due to the official's influence. See *State ex rel. De Concini v. Sullivan*, 188 P.2d 592, 595–96 (Ariz. 1948) (“the object of prosecutions of impeachment in England and the United States is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and powers of those tribunals”).

Here, the “crimes” that could potentially serve as the basis for impeachment are 1) using a cellphone while driving, a Class 2 misdemeanor (SDCL § 32-26-47.1); 2) lane violation, a Class 2 misdemeanor (SDCL § 32-26-6); and 3) the never-brought charge of second degree manslaughter, a Class 4 felony (SDCL § 22-16-20).

1. Using a cellphone while driving, a Class 2 misdemeanor (SDCL § 32-26-47.1)

As noted above, it is clear that Attorney General Ravensborg was not using a cell phone at the time of the accident. House Resolution 7001 constrains the Select Committee's inquiry into the “events surrounding the death of Joe Boever”. The Select Committee finds that Attorney General Ravensborg's use of his cell phone earlier that evening is not an event surrounding the death of Mr. Boever and was not conducted in office or by virtue of his office. Even if it were, the Select Committee finds that the Class 2 misdemeanor of using a cell phone while driving is not an impeachable offense under the law indicated above. Such conduct, while dangerous, should not serve as a basis for removing an official from office under Art. XVI, § 3.

2. Lane violation, a Class 2 misdemeanor (SDCL § 32-26-6)

Attorney General Ravensborg's lane change violation is a matter surrounding the death of Mr. Boever's death, but was not committed in office or by virtue of his office. Such a Class 2 misdemeanor is a commonplace occurrence and is not an impeachable offense under the law indicated above. Such a traffic violation should not serve as a basis for removing an official from office under Art. XVI, § 3.

3. Second degree manslaughter, a Class 4 felony (SDCL § 22-16-20)

The Select Committee considered whether the Attorney General should have been charged and convicted of second degree manslaughter. In South Dakota, second degree manslaughter is “[a]ny reckless killing of one human being . . . by the act or procurement of another . . .” SDCL § 22-16-20. “The words, ‘reckless’ . . . import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist.” SDCL § 22-1-2(1)(d).

In *State v. William Janklow*, 693 N.W.2d 685 (S.D. 2005), Janklow was charged with failure to stop at a stop sign, reckless driving, and second degree manslaughter. *Id.* at 691. A question on appeal included whether Janklow's conduct was “reckless” as required for a second degree manslaughter conviction. The South Dakota Supreme Court began its analysis reviewing SDCL § 22-16-20, which as noted above, uses the term “reckless killing”. The Court stated that “reckless” is defined in SDCL § 22-1-2(1)(d), as cited above. The Court noted previous case law elaborating on the definition of “reckless” in this context.

“[F]or someone's conduct to be deemed reckless, they must consciously disregard a substantial risk.” *State v. Olsen*, 462 N.W.2d 474, 476 (S.D.1990). “Recklessness requires more than ordinary negligent conduct.” *Id.* “The difference between reckless behavior and negligent behavior is primarily measured by the state of mind of the individual.” *Id.*

“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.” *State v. Larson*, 1998 SD 80, ¶ 14, 582 N.W.2d 15, 18 (quoting *Olsen*, 462 N.W.2d at 476–77 (other citations omitted) (emphasis in original)).

. . . . “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.” *Olsen*, 462 N.W.2d at 477. “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.” *Id.* “Mere carelessness or inadvertence or thoughtless omission is insufficient.” *Id.* (citation omitted).

The State argues that the risk that Janklow disregarded was the potential harm arising out of his speeding through a blind intersection without stopping. “Although it is not always possible for the State to directly establish that a defendant was aware of a risk, it can be done indirectly through the defendant’s conduct.” *Olsen*, 462 N.W.2d at 477. “Awareness can be established if the defendant acts in a manner that indicates a reckless disregard for the safety of others.” *Id.* The State maintains that Janklow’s disregard for the safety of others and his indifference to the consequences of his actions were demonstrated by his conduct of speeding through a stop sign at a blind intersection of two highways without stopping or looking for oncoming traffic.

As in *Larson*, this Court cannot say as a matter of law that Janklow’s conduct did not constitute recklessness. Reasonable minds could differ as to this issue. . . . There was sufficient evidence from which the jury could conclude that Janklow was aware of, yet disregarded, the risk of an accident occurring as a result of his conduct.

State v. William Janklow, 693 N.W.2d 685, 693–95 (S.D. 2005).

In its analysis, the Court cited previous cases, including *State v. Olsen*, 462 N.W.2d 474 (S.D. 1990). In *Olsen*, Olsen was slowly driving a farm tractor on a highway when he turned left toward a gravel road. *Id.* at 475. An oncoming vehicle struck Olsen as he turned into the oncoming lane. *Id.* The oncoming driver died on impact. Olsen exclaimed “I didn’t see it” immediately thereafter to a witness. *Id.* Olsen stated he looked both behind and forward but simply did not see the oncoming vehicle. *Id.* Olsen was charged with second degree manslaughter, and moved to dismiss the charge at his preliminary hearing. *Id.* 475. The magistrate dismissed the charge.

On appeal, the South Dakota Supreme Court reviewed the second degree manslaughter statute and definition of reckless cited above and affirmed the dismissal. *Id.* The Court also cited with approval Treiman, *Recklessness and the Model Penal Code*, 9 Am.J.Crim.L. 281, 351 (1981):

It is the concept of conscious disregard that distinguishes recklessness from negligence. The negligent actor fails to perceive a risk that he ought to perceive. The reckless actor perceives or is conscious of the risk, but disregards it.

“Consequently, outwardly identical actions by two people may be reckless behavior for one, but only negligent behavior for the other.” *Olsen* at 477. The Supreme Court held that the State failed to introduce evidence of Olsen’s conduct that would prove anything more than negligence. *Id.* at 477. “Nothing in the evidence of Olsen’s behavior suggests that he was in any way aware of the risk he was creating when he

turned his tractor towards the gravel road.” *Id.* The Court held that failure to yield the right-of-way is not sufficient evidence of culpability to support an involuntary manslaughter charge. *Id.*

A third case before the South Dakota Supreme Court utilized the same law. In *State v. Wall*, 481 N.W.2d 259 (S.D. 1992), Wall was driving a motorhome and struck the rear end of a pickup truck camper while attempting to pass it. *Id.* at 261. Witnesses established Wall had been ducking in and out and passing vehicles at a high rate of speed. *Id.* The Court cited much of the law cited above in analyzing whether a second degree manslaughter charge was properly supported. The Court found the evidence supported the verdict convicting Wall of second degree manslaughter. *Id.* at 263. The Court stated that recklessness was proven considering how narrow the highway was, how wide the RV was, and Wall’s numerous erratic attempts to pass vehicles and multiple cars in one lengthy pass, including shortly after passing an accident scene where the traffic had slowed. *Id.*

The prosecutors who testified in this matter indicated they did not have evidence sufficient to bring a charge of second degree manslaughter against Attorney General Ravnsborg. As stated by a prosecutor, and corroborated by the evidence, how far Attorney General Ravnsborg was onto the shoulder of the road was disputed. It is also unclear how long he had one or more tires over the fog line and why. Without such evidence, a second degree manslaughter charge would have been inappropriate, as it would have been difficult to prove that Attorney General Ravnsborg knew he was over the fog line, recklessly disregarded that knowledge, and chose to continue driving on the shoulder regardless. The Select Committee finds that the evidence does not prove in a clear and convincing manner that Attorney General Ravnsborg committed second degree manslaughter.

4. Corrupt Conduct

There is no case law in South Dakota defining “corrupt conduct”. Merriam-Webster’s dictionary, however, defines “corrupt” as “morally degenerate and perverted” and “characterized by improper conduct (such as bribery or the selling of favors).” *Corrupt*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/corrupt> (last visited Jan. 26, 2022). As indicated above, any corrupt conduct may have had to occur in office in order to serve as a basis for impeachment.

The Select Committee finds no evidence of “corrupt conduct” committed by Attorney General Ravnsborg surrounding the death of Mr. Boever. The Select Committee has considered whether potentially misrepresenting cell phone usage to the North Dakota investigators occurred under a clear and convincing standard, and if so, whether such conduct rose to “corrupt conduct.” The Select Committee has similarly considered whether Attorney General Ravnsborg’s account to law enforcement as to the positioning of his vehicle was inaccurate or a misrepresentation of facts. The Select Committee has also considered whether the Attorney General’s dissemination of a press release regarding the accident on official Attorney General letterhead (Exhibit A, No. 68) was corrupt action. Finally, the Select Committee has considered whether asking South Dakota DCI Agent Gromer, who was not involved in the investigation, what North Dakota investigators would find on his phones was corrupt conduct. The Select Committee finds by a clear and convincing standard of proof that such alleged conduct was not “corrupt” in nature as defined above, whether such conduct had to have occurred “in office” or not.

5. Malfeasance in Office

The South Dakota Supreme Court has explained the term “malfeasance” “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.” *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000). In order to qualify as malfeasance, an act

“must have been done [1] knowingly, [2] willfully [3] and with an evil or corrupt motive and purpose.” *Id.* at 269.

The South Dakota Supreme Court has cautioned that a mistake, poor judgment, or incompetence alone does not rise to the level of malfeasance. “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 duties.” *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 269 (S.D. 2009). The Court indicated that if an officer knowingly charged a 33.5% premium for school books when the law only permitted charging a 10% premium, the officer would have committed malfeasance in office. *Howe v. Thompson*, 150 N.W. 301, 303 (S.D. 1914).

A majority of the Select Committee finds that Attorney General Ravensborg did not commit malfeasance in office under a clear and convincing standard. In his second interview with North Dakota investigators, Attorney General Ravensborg at best underplayed or omitted, and at worst, misrepresented whether he was on his phone during the drive from Redfield to Highmore. (Exhibit A, No. 44). The majority of the Select Committee finds that such answers were not given “in office”, that is, by virtue of his office or in his capacity as Attorney General. In other words, giving such statements was not “the performance of an act by an officer in his official capacity that is wholly illegal and wrongful.” *See State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000). Even if any misrepresentations were made “in office”, a majority of the Select Committee finds that such answers, under a clear and convincing standard, do not rise to the level of “evil conduct or an illegal deed” committed with “an evil or corrupt motive and purpose” as required by South Dakota case law. *See id.*

For the same reasons, a majority of the Select Committee finds that disseminating a press release regarding the accident on official Attorney General letterhead and asking DCI Agent Gromer what North Dakota investigators would find on his phones do not constitute malfeasance in office.

6. Misdemeanor in Office

There are no South Dakota cases regarding or defining the term “misdemeanor in office”. Black’s Law Dictionary 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.” Synonyms include “malfeasance in office; official misconduct; abuse of the public trust; abuse of official trust; abuse of power.” Abuse of Public Office, Black’s Law Dictionary (11th edition). The term “official misconduct” in 1830 was defined as “a public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. Also termed misconduct in office; misbehavior in office; malconduct in office; misdemeanor in office; corruption in office; official corruption; political corruption; abuse of office.” Misconduct, Black’s Law Dictionary (11th edition).

The Florida Supreme Court defined the term “misdemeanor in office” as “any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office.” *In re Investigation of Cir. Judge of Eleventh Jud. Cir. of Fla.*, 93 So. 2d 601, 605–06 (Fla. 1957). The court also found that “misdemeanor in office is synonymous with misconduct in office.” *Id.* To avoid surplusage, the South Dakota Supreme Court may find a means to distinguish between the two terms, as both are listed as impeachable offenses. Regardless, both terms refer to conduct related to being in office.

The term “misdemeanor” historically was “adopted to apply to all offenses other than treason or felony. The term included a wide variety of wrongs and misprisions. Many of the substantive legal principles and

procedures applicable to felonies were not applied in the case of misdemeanors.” Misdemeanor, Black’s Law Dictionary (11th edition) (quoting Rollin M. Perkins & Ronald N. Boyce, Criminal Law 15 (3d ed. 1982)).

The Select Committee finds under a clear and convincing standard that Attorney General Ravnsborg did not commit misdemeanor in office, as he committed no crime or other wrongful act involving moral turpitude by virtue or authority of office.

CONCLUSIONS AND RECOMMENDATIONS

After careful and comprehensive investigation and consideration of the facts and applicable law, a majority of the Select Committee hereby concludes Attorney General Ravnsborg did not commit an impeachable offense in his conduct surrounding the death of Joe Boever. The Select Committee recommends that articles of impeachment do not issue.

ADDENDUM

The Select Committee includes the following addendum to address the Executive Branch's interference in the criminal proceedings and the impeachment process.

The Executive Branch made promises that the criminal investigation would be transparent and released to the public. The Highway Patrol thereafter asked Supervisory BCI Agent Arnie Rummel for permission to disseminate the initial crash report. Secretary Price testified to the Select Committee he was not aware of another case in which the Department of Public Safety released death investigation information before a state's attorney filed charges. The Highway Patrol, however, informed Supervisory BCI Agent Arnie Rummel that such reports were routinely disseminated to the public in seeking permission to disclose this case's initial crash report. Supervisory BCI Agent Rummel did not want the initial crash report disclosed, but in being told they routinely released such reports, asked the Highway Patrol to make the report accurate before its disclosure. Specifically, Supervisory BCI Agent Arnie Rummel asked that the report not state Attorney General Ravnsborg was distracted by his cell phone, since the data was not yet extracted from his cell phones to make that determination.

Secretary Price, in consultation with legal counsel and the Governor, authorized the posting of the initial crash report on the South Dakota Public Safety website. At the time the crash report was posted, he considered a portion of the investigation complete although additional work still needed to be completed. The video recording of the interrogation of Attorney General Ravnsborg was released after the Hyde County State's Attorney decided to move forward with misdemeanors charges but before the arraignment. State's Attorney Emily Sovell objected to the release of the video interviews and other investigative information. State's Attorney Sovell was also not in favor of the Governor holding press conferences or any other public dissemination of the investigation. Upon learning of a planned press conference and planned dissemination of confidential investigative material, State's Attorney Sovell emailed Secretary Price and the investigators stating her concerns and requested such materials not be released. State's Attorney Sovell also emailed Secretary Price indicating that due to undue pressure Secretary Price was attempting to place on her, she would not be including Secretary Price in further discussions of the case. State's Attorney Sovell did not want any perception that political pressures or anything else from the outside was affecting her decisions in the case.

While the Department of Public Safety released the initial crash report, containing incomplete information, the Department did not later release the more comprehensive crash report or its supplements after they were completed.

The Highway Patrol also asked Supervisory BCI Agent Rummel for permission to make Attorney General Ravnsborg's vehicle open for public inspection. Supervisory BCI Agent Rummel objected to this request. The Highway Patrol also asked the BCI's information be released to the Highway Patrol. Supervisory BCI Agent Rummel denied that request and sent BCI's information to the State's Attorney, as is normal protocol.

After the misdemeanor charges were filed, Secretary Price had discussions with the prosecutors indicating his displeasure and disagreement as to what was charged. Secretary Price indicated that he disagreed with State's Attorney Sovell not charging second degree manslaughter.

Secretary Price was advised by counsel not to disclose to the Select Committee the content of his discussions with the Governor and whether the release of the investigatory information was at the Governor's direction. Secretary Price testified that he had been advised by legal counsel not to talk about specific privileged conversations that he had with the Governor.

Attorney General Ravensborg's criminal defense counsel argued that Governor Noem made an unprecedented, unusual, and early release of information regarding the criminal investigation. See Exhibit A, No. 69, Motion for Order Precluding Release of Criminal Investigation Information to Protect Defendant's Due Process Rights dated February 25, 2021. On February 23, 2021, Governor Noem informed she was going to hold a press conference regarding Attorney General Jason Ravensborg and release information created during the criminal investigation process. *Id.* The Department of Public Safety released links on its website which contained the two video interviews with Attorney General Ravensborg by the North Dakota BCI. *Id.* On February 25, 2021, Governor Noem held a press conference promising release of additional information on either February 25 or 26, 2021. *Id.*

On February 25, 2021, the Honorable John Brown issued an Order Precluding Disclosure of Criminal Investigation Information. See Exhibit A, No. 69. The Court ordered that the Department of Public Safety, law enforcement, or any member of state government, including Governor Kristi Noem, is precluded from producing any further criminal reports, interviews, test results, digital media, photographs, videos, statements, or anything whatsoever related to the matter to the public. The court further ordered that the links to the law enforcement video interviews should be removed by the South Dakota Department of Public Safety and any and all other State agencies having such links in order to prevent the public from having access to information which would constitute hearsay at a trial of the matter. A criminal defendant's right to a fair trial is one of the bedrocks of the American judicial system. See *e.g.*, *State v. Weatherford*, 416 N.W.2d 47, 50–51 (S.D. 1987) ("The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment."). The Executive Branch's efforts to share confidential information with the public and infringe upon this foundational right must be condemned.

Unfortunately, the Governor's inappropriate involvement did not end at the conclusion of the criminal case. The following were published on the South Dakota Department of Public Safety website during this impeachment investigation (listed in Exhibit A under No. 67):

- September 1, 2021, letter to Speaker of the House from Craig Price, Secretary of South Dakota Department of Public Safety. Secretary Price states that Ravensborg should have been charged with second-degree manslaughter.
- Audio of 911 call placed by Jason Ravensborg
- Transcript of 911 call placed by Jason Ravensborg
- Accident report
- Order Precluding Disclosure of Criminal Investigation Information
- Toxicology Carboxyhemoglobin Analytical Report
- Toxicology Drug Analytical Report
- Toxicology Alcohol Volatiles Analytical Report
- Photo of Ravensborg's vehicle

On January 19, 2022, Governor Noem told the Associated Press that the South Dakota House Investigative Committee is "attacking the integrity of our law enforcement officers," adding that it was an "inappropriate" and "tragic" use of the Committee's attention.

On January 21 to 23, 2022, the Select Committee members were subjected to hundreds of telemarketing calls to their cell phones from the Ohio-based entity Grand Solutions, Inc. Angel Kane owns the entity and spokesperson Jonathon Petrea speaks on its behalf. It is apparent that these calls were meant to pressure members of the Select Committee to impeach the Attorney General. The telemarketing firm did not indicate who paid for these efforts during the call or at any point thereafter. A voicemail from the telemarketing company was received which suggests the Governor may be involved with those who funded the telemarketing campaign. The Governor's Office has denied any such involvement.

On January 24, 2022, a press release from Governor Noem was released attempting to pressure House lawmakers weighing impeachment charges against the Attorney General and to release the investigative file on the 2020 fatal car crash.

On March 9, 2022, a press release from the Secretary of Public Safety Craig Price was released urging the Committee to consider the facts in the impeachment investigation and "to consider the indisputable conclusions by the crash reconstruction experts". Exhibit A, No. 73.

On March 9, 2022, Secretary Price released to the press a three-page letter to Speaker Gosch detailing why he believes Ravensborg is "unfit to hold the position as the chief law enforcement officer for the state of South Dakota." Secretary Price also released to the press Trooper John Berndt's supplemental report (Quadrants Described) dated March 9, 2022.

On March 9, 2022, Governor Noem sent a series of tweets questioning why Ravensborg received a closed-door hearing with members of the Legislature's Joint Committee on Appropriations, telling readers "REMINDER: the House is still in the middle of impeachment proceedings." "Let me get this straight. . . ," Noem wrote, "they don't have time to conclude their impeachment process, but they have time for secret closed-door meetings to give Ravensborg \$1.5 million with no accountability?"

On March 12, 2022, Dakota Institute for Legislative Solutions, an organization touting itself as a non-profit organized to carry forward the Governor's agenda, began running billboard advertisements targeting four members of the House Select Committee on Investigation. The ads named the following Committee Members: Representatives Steven Haugaard, Jamie Smith, Jon Hansen and Spencer Gosch, the Speaker of the House serving as chairman of the committee. The signs accuse the Committee Members of obstructing the impeachment process: "What is [Committee Member] trying to hide??? Impeach the Attorney General Now!!!" Two of the Committee Members, Representatives Haugaard and Smith, are challenging Governor Noem in her re-election campaign.

On March 14, 2022, a fifth lawmaker, Representative Scott Odenbach, was added to the list of legislators being specifically named in the billboards. Representative Odenbach responded that he believes the Governor is eager to appoint another Attorney General before she must face the Government Accountability Board, referring to an investigatory panel of retired judges who have pending investigations open into abuse of power complaints levied against Governor Noem. The Governor's Office denies being behind the billboard ads or Dakota Institute.

During March of 2022, Governor Noem and Secretary Price made public statements that Ravensborg is unfit to be the Attorney General.

On March 17, 2022, the House Select Committee on Impeachment issued a cease and desist letter to Governor Noem and the South Dakota Executive Branch. The Committee letter stated that the South Dakota Constitution places the sole power of impeachment with the House of Representatives and requires the Senate to try an impeachment. The Committee letter further stated that the Executive Branch is attempting to taint the Senator jury pool with irrelevant and confidential information. The letter stated that these efforts have been continuous and aimed at bringing irrelevant information to the public and undue pressure on the Select Committee Members. The letter further stated these efforts are both harmful and unwelcome and subject the outcome to judicial scrutiny. As previous requests to refrain from such conduct have gone unheeded, the Select Committee requested the Executive Branch cease and desist all further disclosures of the investigative file to the public and all further attempts to pressure and influence the Select Committee Members and the House of Representatives. See Exhibit A, No. 74.

The South Dakota Constitution clearly provides that an impeachment of a state official is purely a legislative proceeding. Article XVI of the South Dakota Constitution empowers the Legislature with the authority to impeach and try state officers. Section 1 places “the sole power of impeachment” with the House of Representatives. Section 2 requires the Senate to try an impeachment, with the Senators sitting as the jury under oath “to do justice according to law and evidence.” The Constitution does not include a role for the Executive Branch in impeachment proceedings. Despite the Constitution’s clear authority granted to the Legislature, the Executive Branch has continued to inappropriately attempt to influence legislators throughout the impeachment process.

Criminal prosecutors are granted prosecutorial discretion when making charging decisions. In order to protect this discretion and prevent intimidation and harassment, prosecutors are granted absolute immunity for charging decisions. *Burns v. Reed*, 500 U.S. 478, 492–94 (1991). Members of the House of Representatives should similarly be free from harassment and intimidation during the impeachment process. The Representatives are sitting in the role of prosecutors – choosing to decide whether a state official should be impeached and then tried by the Senate. See *Burns v. Reed*, 500 U.S. 478, 492–94 (1991). Instead of making her perspective known and then allowing the House of Representatives to investigate, Governor Noem and the Executive Branch have continued to insert themselves into the impeachment process. From tweets regarding specific legislators⁵, to press conferences calling for the Attorney General’s impeachment, to the Governor’s failure to condemn the phone calls and billboards improperly seeking to influence members of the Select Committee, Governor Noem has continued to improperly influence the impeachment process. Most recently, Secretary Price released a letter summarizing and citing text messages from the investigative file – the same investigative file he previously had warned legislators was confidential. These tactics by the Executive Branch ultimately resulted in a cease and desist letter delivered to the Governor.

The Select Committee on Impeachment unequivocally condemns Governor Noem’s attempts to influence this Committee.

The Select Committee also notes that the question of impeachment is now in front of the entire House of Representatives. It cautions Governor Noem and the Executive Branch from seeking to improperly influence members of the House of Representatives.

⁵ For example, on March 11, Governor Noem tweeted from her official account, “Why is Speaker Gosch protecting the AG? And why is the @argusleader helping him?”

