was wrongly procured and any Article of Impeachment based upon that testimony must be dismissed.

FIFTH AFFIRMATIVE DEFENSE TO ARTICLE III

The allegations in Article III do not rise to the level of ''high Crimes and Misdemeanors'' because they address purely personal conduct that is not criminal. Prior impeachment precedent has never before sought to convict and remove a judge from office based upon personal non-criminal conduct. The very nature of the impeachment process is focused first and foremost upon the official actions of judges. Where allegations in the Articles of Impeachment address non-official personal acts by judges, longstanding precedent has limited ''high Crimes and Misdemeanors'' to those personal acts that are also indictable offenses. Article III ignores this precedent in seeking to convict and remove Judge Porteous from office for non-official, non-criminal acts. While it is possible that the House of Representatives would claim that the actions taken in relation to the personal bankruptcy were indictable offenses, this claim would conflict with the multi-year investigation of the United States Department of Justice which concluded that prosecution was not warranted in light of the concern that the issues related to the bankruptcy were not material. It would also conflict with the criminal bankruptcy statutes, which require that any alleged false statement not be made simply knowingly or willfully, but fraudulently, before criminal liability may attach to such conduct. In framing Article III, the House of Representatives is seeking to convict and remove a sitting United States District Judge based upon a lowered standard, one that does not constitute ''high Crimes and Misdemeanors,'' and one that has never before provided a basis for impeachment, much less conviction and removal from office. Article III of the Articles of Impeachment should be dismissed.

ARTICLE IV

ANSWER TO ARTICLE IV

Without waiving his affirmative defenses, Judge Porteous denies that he knowingly made material false statements in order to obtain the office of United States District Court Judge.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV does not allege an offense that supports the conviction and removal of a sitting Article III United States District Judge under the impeachment clause of the Constitution. Article II, Section 4 of the Constitution provides that the civil officers shall be removed from office only upon ''Impeachment for, and Conviction of, Treason, Bribery or other high Crimes and Misdemeanors.'' The charges in the articles against Judge Porteous do not rise to the constitutionally required level of ''high Crimes and Misdemeanors.'' Because Article IV does not meet the rigorous constitutional standard for conviction and removal, it should be dismissed.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against Judge Porteous or what allegations rise to the level of ''high Crimes and Misdemeanors'' as required by the Constitution. In essence, Article IV alleges that Judge Porteous gave false answers on various forms that were presented in connection with the background investigation that was used to evaluate his appointment and confirmation as a United States District Judge. However, it is not clear whether Article IV contends that simply providing a single one of the alleged false statements is a ''high Crime or Misdemeanor'' or whether the ''high Crime or Misdemeanor'' is based upon all of the acts alleged, i.e., several alleged false statements and other conduct alleged. Moreover, the nature of the questions on the forms that are the focus of this Article themselves add to the vagueness problem.

As we set forth in the SECOND AFFIRMATIVE DEFENSE TO ARTICLE I, it is a fundamental principle of our law and the Constitution that a person has a right to know what specific charges he is facing. Without such notice, no one can prepare the defense to which every person is entitled. The law and the Constitution also require that the charges provide adequate notice to jurors so they may know the basis for the vote they must make. Without a definite and specific identification of specific ''high Crime and Misdemeanor'' upon which the Article of Impeachment is grounded, a trial becomes a moving target for the accused.

Article IV fails to provide the required definite and specific identification. As an article of impeachment, it is constitutionally defective and should be dismissed.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE IV

For the reasons set forth in the THIRD AFFIRMATIVE DEFENSE TO ARTICLE I, Article IV is constitutionally defective because it charges multiple instances of alleged acts of making false statements in one article, which makes it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of the two-thirds of the members. Accordingly, Article IV should fail.

FOURTH AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV cannot support the conviction and removal of an Article III United States District Judge because the alleged conduct preceded Judge Porteous' service as a United States District Judge. The constitutional impeachment mechanism provides a procedure to remove a judge for the commission of ''high Crimes and Misdemeanors'' while in federal office. The impeachment precedents do not provide a single example of an Article of Impeachment that has ever been based upon conduct that allegedly occurred prior to the impeached officer's entry into federal office. In contrast, the precedents suggest that while the House of Representatives may have investigated such allegations, that such conduct has never provided the basis for an impeachment and, significantly, the House has, on occasion, refused to take action because the allegations preceded the officer's entry into federal service. Moreover, while Judge Porteous contends that any attempt to use Article III's ''good behaviour'' clause to lower the standard necessary to impeach a federal judge is unsupported by the Constitution's impeachment clause, the House has clearly applied that lower standard in returning the four Articles of Impeachment. To the extent that the House has relied on the ''good behaviour'' clause, that clause states that judges ''shall hold their offices during good behaviour'' and clearly relates to a judge's conduct while in federal judicial office. Because the allegations of Article IV relate to a period prior to Judge Porteous taking the federal bench, Article IV must be dismissed.

Respectfully submitted,

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Submitted: April 7, 2010.

The ACTING PRESIDENT pro tempore. The Court of Impeachment is adjourned.

SCHEDULE

Mr. REID. Mr. President, today, the Senate convened at 2 p.m. and will be in a period of morning business until 3 p.m., with the time equally divided and controlled between the two leaders or their designees.

At 3 p.m., the Senate will resume the motion to proceed to H.R. 4851. The Republican leader will control the time between 5 p.m. and 5:15 p.m. and the majority leader will control the time from 5:15 p.m. until 5:30 p.m.

At 5:30 p.m., the Senate will proceed to a rollcall vote on the motion to invoke cloture on the motion to proceed to H.R. 4851. That will be the first vote of the day.

At 3:30 p.m., we will interrupt debate for a moment of silence to honor the coal miners killed in last week's explosion at Upper Big Branch Mine in West Virginia.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we proceed to morning business as previously outlined and that Senators be permitted to speak for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR MOMENT OF SILENCE

Mr. REID. Mr. President, I ask unanimous consent that at 3:30 p.m., the Senate observe a moment of silence in solidarity with the people of West Virginia regarding the mining accident.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECENT TRAGEDIES

Mr. REID. Mr. President, I wish to extend my personal condolences to those who suffered the two tragedies while we were back home—one here in America and one halfway around the world.

The mining tragedy in West Virginia hit home for me. It brought back a lot of memories. When I was less than 1 week old, my dad was working in a mine in a place called Chloride, AZ, which was just over the Colorado River from Searchlight. He and another man were sinking a shaft, and in those days you didn't have all the protections you have today. They had drilled some holes—seven to be exact—and always, when the holes are lit, both miners