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United States Senate

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January 7, 2025
The Honorable Mike Johnson
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515

Dear Speaker Johnson,

I write to urge the House of Representatives to immediately advance the pending articles of impeachment against Chief Judge James E. Boasberg, United States District Judge for the District of Columbia, and Judge Deborah L. Boardman, United States District Judge for the District of Maryland.

Today, I will convene a hearing on "Impeachment: Holding Rogue Judges Accountable," in my capacity as Chairman of the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights of the United States Senate Committee on the Judiciary. That hearing will make two points clear: (1) Chief Judge James E. Boasberg and Judge Deborah L. Boardman have committed high Crimes and Misdemeanors against the Government of the United States; and (2) the Constitution requires that the House of Representatives vote to impeach federal judges who have committed high Crimes and Misdemeanors.

As you know, Representative Brandon Gill has introduced articles of impeachment against Chief Judge Boasberg for authorizing sealed subpoenas and nondisclosure orders targeting sitting United States Senators—including myself—in defiance of the Speech or Debate Clause and the separation of powers. Judge Boasberg's orders, issued without credible basis, represent an unprecedented overreach of judicial authority and a partisan intrusion into the independence of the legislative branch.

Likewise, Representative Chip Roy has filed articles of impeachment against Judge Boardman for her egregious conduct in *United States v. Nicholas Roske*—the case involving the attempted assassination of Supreme Court Justice Brett Kavanaugh. In that case, Judge Boardman reduced a potential thirty-year sentence to a mere eight years, citing as mitigating the defendant's self-declared status as a "transgender woman" and expressing concern that "she" would be housed in a male facility. Judge Boardman's partisan predilections have overridden her oath to uphold the Constitution and to support and defend its government. By exposing federal judges to the threat of death, Judge Boardman has undermined the very survival of the federal judiciary.

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Both cases reveal a judiciary that has explicitly ignored its constitutional duties. I urge the House to take up its constitutional duty and advance the impeachment resolutions introduced by Representatives Gill and Roy. Advancing these measures would affirm that the rule of law still governs the Republic. No robe, no ideology, and no lifetime appointment seats any officer above the Constitution.

I. Judge Boasberg's Orders to Seal the Subpoenas of United States Senators Constitute Grave Overreaches of the Judicial Power.

Judge James Boasberg's conduct represents the most serious violation of the separation of powers. By secretly approving and sealing subpoenas directed at nearly twenty percent of sitting Republican Senators, Judge Boasberg crossed a constitutional boundary that has no comparison in modern history.

Those subpoenas were no ordinary requests. They sought text messages, voicemails, and geolocation data, as the digital record of our communications and movements—information inseparable from the performance of our legislative duties. In authorizing those subpoenas and placing them under seal, Judge Boasberg turned the judiciary from an independent branch into an instrument of political surveillance.

His actions violated not only the Constitution but also federal law. Under 2 U.S.C. § 6628, enacted on December 8, 2004, the data and communications of a Senate office—defined as "Senate data"—are expressly protected from compelled disclosure. The statute prohibits any court order or process that prevents a Senate office from being notified when its data is sought. Congress enacted this protection precisely to preserve the independence of the legislative branch from judicial or executive intrusion. Judge Boasberg disregarded that command. By sealing the subpoena and denying notice to its target, he effectively nullified the statute's protection and undermined the very institution that enacted it.

The constitutional breach is even more profound. Under Article I, Section 6, Clause 1, Members of Congress are shielded from investigation or interference for their legislative acts. This protection is not a personal privilege; it is a structural safeguard for self-government. The clause is necessary so that the people's representatives may speak, deliberate, and legislate without fear of retaliation or surveillance from the other branches of government. Judge Boasberg's order ignored this constitutional safeguard.

In his own words, Judge Boasberg "found reasonable grounds to believe" that disclosing each subpoena "*will lead* in destruction of or tampering with evidence, intimidation of witnesses, and serious jeopardy to the investigation." Yet he pointed to no evidence, cited no facts, and offered no justification for the accusation. To

presume that sitting United States Senators would destroy evidence or intimidate witnesses is not legal reasoning—it is a political judgment, and a reckless one at that.

With his order, Judge Boasberg authorized the seizure of privileged legislative communications and did so in secret. This was not the rule of law but the misuse of law—lawfare in service of partisan ends. The Biden Administration sought access to the inner workings of its critics, and Judge Boasberg enabled it.

In so doing, Judge Boasberg violated the separation of powers, the Speech or Debate Clause, and the statutory protections of 2 U.S.C. § 6628. A judge who uses his power to intrude upon the Legislature ceases to defend the Constitution and begins to endanger it. Judge Boasberg's order was an assault on the independence of Congress and a breach of his oath to uphold the law.

A judiciary that forgets its limits invites its own peril. Independence was never meant to shield the courts from accountability, but to preserve their fidelity to the law. Judge Boasberg's conduct betrayed that trust and placed his office outside the bounds of "good Behaviour" required by Article III of the Constitution and amounts to high Crimes and Misdemeanors against the Government of the United States.

II. Judge Boardman's Sentencing Decision Constitutes a Grave Breach of Judicial Duty.

In the courtroom, the law is a truth-finding enterprise. Its purpose is to uphold right over wrong and to protect the institutions of our Republic—including the independent judiciary. When a judge exercises judicial power in a way that endangers those institutions, she abandons the very duty her office demands.

In *United States v. Nicholas Roske*, Judge Deborah Boardman did precisely that. Nicholas Roske—a man—armed himself with a firearm, a knife, duct tape, and zip ties, traveled across the country with the explicit intent to assassinate Supreme Court Justice Brett Kavanaugh and, reportedly, two other Justices. The Department of Justice, recognizing the act as domestic terrorism, sought a thirty-year sentence. Judge Boardman, however, imposed a mere eight-year term—reducing the punishment by more than two decades— a sentence so drastically out of step with the gravity of the offense that it cannot be squared with any plausible understanding of judicial duty.

To justify that extraordinary leniency, Judge Boardman emphasized the defendant's self-declared transgender identity and expressed concern that "she" would be housed in a male facility and might face difficulty obtaining "gender-affirming care." Whatever one thinks of such considerations in ordinary cases, they

are irrelevant where the defendant attempted to murder a sitting Justice of the United States Supreme Court. The law does not permit a judge to reduce punishment for an attempted political assassination because of the defendant's personal identity or housing preferences.

Judge Boardman quoted a psychologist who claimed that "Ms. Roske's conduct did not derive from antisocial or criminal orientation." Judge Boardman's deviation from the truth is extreme: plotting to murder a sitting Justice is the definition of antisocial and criminal conduct. Yet Judge Boardman credited it and used it to justify a sentence that disregarded the safety of the judiciary and the rule of law.

Judge Boardman abandoned her judicial responsibility. A judge who responds to an attempted assassination of a United States Supreme Court Justice with an eight-year sentence—a reduction of more than twenty years from the government's recommendation—places the judiciary itself at risk. Such a sentence sends a dangerous message: that political violence against judges may be met with mercy rather than severity. In doing so, Judge Boardman undermined the deterrent function of sentencing and the security of the courts.

This failure is not an error in judgment; it is a breach of constitutional duty. Article III grants life tenure only "during good Behaviour." A judge who cannot or will not impose a punishment commensurate with an attempt to murder a Supreme Court Justice has ceased to act "during good Behaviour." Judge Boardman's decision erodes the public's confidence in the impartial administration of justice and endangers the very institution she was entrusted to protect.

For these reasons—for abandoning the rule of law, for endangering the judiciary, and for imposing a sentence that no reasonable judge could impose under these facts— Judge Boardman's conduct violates the good-behavior standard of Article III and constitutes the kind of grave breach of judicial duty the Framers entrusted impeachment to address.

III. The Constitution Establishes Impeachment as the Exclusive Remedy for Judicial Misconduct.

The Framers vested Congress with one instrument to address abuses of the public trust: impeachment.

Article II, Section 4 provides that "the President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Federal judges are civil officers within that meaning.

Impeachment is not confined solely to criminal behavior. Were impeachment primarily concerned with criminal conduct, impeachment would have no purpose. If a judge commits a crime and is convicted by a jury, imprisonment alone removes him from the bench; impeachment would be excessive. The Framers designed impeachment to reach something far deeper—betrayals of the public trust that erode the foundations of lawful government, even when no criminal statute has been violated.

As *Federalist No. 65* explains, impeachable offenses are those that "proceed from the misconduct of public men, or the abuse or violation of some public trust." *Federalist No. 79* makes clear that while judicial independence is vital, it was never meant to guarantee judicial impunity: judges "hold their offices during good Behaviour," and Congress bears the duty to enforce that condition.

Article III's Good Behaviour Clause is therefore not decorative language—it is the constitutional condition of judicial tenure. In our system, there is no writ or administrative process to remove a judge for misbehavior; impeachment is the sole mechanism by which the Constitution ensures that judicial independence does not degenerate into judicial unaccountability.

Good behavior requires good faith. It demands that judges exercise judicial power in obedience to law, not in service of ideology. When a judge subordinates truth to doctrine or uses judicial authority to intrude upon another branch, he ceases to act "during good Behaviour." Both Chief Judge Boasberg and Judge Boardman have fallen to such errors.

History confirms that impeachment has never been limited to indictable crime. In 1803, Judge John Pickering was removed for drunkenness, mental deterioration, and unlawful rulings—conduct that rendered him incapable of faithful service. In 1936, Judge Halsted Ritter was impeached and convicted for behavior that brought his court "into scandal and disrepute," though he had violated no criminal law. These precedents demonstrate that judges may be removed not only for corruption or crime, but for any conduct that undermines the dignity, impartiality, and integrity essential to their office.

By authorizing secret subpoenas against sitting Senators in violation of the Speech or Debate Clause and federal statute, Judge Boasberg undermined the separation of powers and betrayed his oath. By turning the sentencing of an attempted assassin into a platform for ideology, Judge Boardman abandoned truth and subverted the rule of law. Each has placed personal ideology above law and therefore beyond the bounds of constitutional trust.

IV. Recommendation and Call to Action

Article I, Section 2 vests in the House the sole power of impeachment, and with it, the responsibility to defend the Constitution when officers of the judiciary abandon it.

To fail to act would teach future judges that ideology excuses lawlessness and that "good Behaviour" is an empty phrase. To act would reaffirm that judicial independence exists to protect the rule of law—not to shield those who defy it.

Accordingly, I respectfully urge the House to:

1. Advance and adopt the impeachment resolutions introduced by Representative Brandon Gill and Representative Chip Roy against Chief Judge James E. Boasberg and Judge Deborah L. Boardman;

2. Approve articles of impeachment charging both judges with abuse of judicial authority, dereliction of constitutional duty, violation of the separation of powers, and conduct unbecoming a federal judge; and

3. Transmit those articles to the Senate for trial to remove Chief Judge James E. Boasberg and Judge Deborah L. Boardman from office.

The Constitution entrusts Congress with the solemn obligation to preserve the rule of law against corruption and decay. Judicial independence was never meant to shield misconduct; it was meant to ensure fidelity to the law. To defend that principle is an act of constitutional faith.

Respectfully,

Ted Cruz
United States Senator

Chairman of the Subcommittee on Federal Courts and Oversight

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