Ethically Ignoring Impeachment Efforts: Historical Case Study of the Politics of the Impeachment Efforts of Justice Douglas

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INTRODUCTION

"[A]n impeachable offense is whatever a majority of the House of Representatives considers it to be at a moment in history."[1] Then-Congressman Gerald Ford spoke these words on the floor of the House of Representatives in 1970 when debating whether the House should impeach Justice William O. Douglas over alleged ethical improprieties and improper judicial conduct. In 2017, Congresswoman Maxine Waters made a similar claim regarding President Trump that "[i]mpeachment is about whatever Congress says it is."[2] The statements of Representatives Ford and Waters offer frank assessments of the constitutional standard involving the impeachment of certain federal officials, such as Justices of the Supreme Court, and they reveal how flexible and broadly wielded the impeachment power can be.

It is not just politicians who have raised the issue of impeachment in the public debate. In fact, one of the most prominent impeachment campaigns against a Supreme Court Justice was sponsored by a private, right-wing organization called the John Birch Society.[3] This movement targeted Chief Justice Earl Warren, and it reached such great popularity that the movement's "Impeach Earl Warren" billboards were "ubiquitous" throughout the countryside during the late 1950s and the 1960s.[4] More than a million Americans signed a petition calling for Warren's removal.[5] In the years following Chief Justice Warren's (voluntary) retirement, impeachment of Supreme Court Justices remained a hot-button issue. Perhaps the most prominent judicial target of calls for impeachment since Warren was Justice William O. Douglas.[6]

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1. 116 CONG. REC. 11,913 (1970).

2. Buckner F. Melton, Jr., *The Legal Questions Still Unanswered by Trump's Impeachment*, THE ATLANTIC (December 29, 2019), https://www.theatlantic.com/ideas/archive/2019/12/questions-left-unanswered-trumps-impeachment/603994/ [https://perma.cc/4TK3-DXEW].

3. *See* Robert Brown *From Earl Warren to Wendell Griffen: A Study of Judicial Intimidation and Judicial Self-Restraint*, 28 U. ARK. LITTLE ROCK L. REV. 1, 2–3 (2005).

4. *See* Michael Anthony Lawrence, *Justice-As-Fairness as Judicial Guiding Principle: Remembering John Rawls and the Warren Court*, 81 BROOK. L. REV. 673, 674 (2016).

5. *See* Brown, *supra* note 3, at 4.

6. *See* Marjorie Hunter, *Ford Asks Douglas's Ouster*, N.Y. TIMES, Apr. 16, 1970, at 1.

As this Note will explore, Justice Douglas's impeachment saga represents a fascinating historical episode about the role of and motivations behind impeachment in political discourse. Many scholars have suggested that the efforts to impeach Justice Douglas were primarily driven by political considerations.[7] However, this impeachment episode is particularly interesting to analyze through the lens of legal and judicial ethics because, notwithstanding some scholars' contentions that the effort was politically motivated, the impeachment charges against Justice Douglas at least purported to rely on the American Bar Association's ("ABA") *Canons of Judicial Ethics*.[8] Was the impeachment of Justice Douglas an example of government officials attempting to enforce the *Canons of Judicial Ethics*? Alternatively, was the impeachment effort an example of political actors weaponizing the *Canons of Judicial Ethics* to further political goals?

This Note seeks to answer these questions. First, it explores the allegations against Justice Douglas and identifies the extent to which these allegations actually recognized principles of judicial ethics. Second, this Note considers the political motivations lurking behind the impeachment efforts. Third, it evaluates Justice Douglas's response to the allegations, particularly from the viewpoint of judicial ethics. Finally, this paper proposes a new Model Rule of Judicial Conduct designed to insulate judges from allegations of political decisionmaking should they face charges of impeachment. This proposed rule is consistent with the theoretical underpinnings behind the importance of public confidence in the judiciary, which is a feature embodied in both the current *Model Rules of Judicial Conduct*, as well as the constitutional framework of our government. Given the flexible nature of impeachment, this new rule will provide firmer guidance for judges if and when impeachment campaigns are leveled against them.

I. ALLEGATIONS AGAINST DOUGLAS

On April 15, 1970, Congressman Gerald Ford, a Republican from Michigan, rose on the floor of the House of Representatives to give a lengthy speech about the misconduct of Justice William O. Douglas.[9] In this speech, Ford set forth the allegations that he believed warranted a thorough investigation conducted by a special committee in the House of Representatives.[10] Throughout his statement on the floor of the House, Ford identified several ethical and legal obligations broken by Justice Douglas, as well as the instances of conduct that constitute the violation of those obligations.[11] This Part first identifies the obligations alleged to

7. *See generally* MICHAEL J. GERHARDT, THE FEDERAL IMPEACHMENT PROCESSES (2000).

8. 116 CONG. REC. 11,912 (1970).

9. *Id.*

10. *Id.* at 11,919.

11. *See, e.g.*, *id.* at 11,912 (citing CANONS OF JUD. ETHICS Canons 4, 24, 31 (AM. BAR ASS'N 1924)). Interestingly, Ford's speech, which was given in 1970, references the "36-year-old Canons of Judicial Ethics of the American Bar Association." *Id.* However, the original thirty-four *Canons of Judicial Ethics* were adopted

have been violated and then the specific instances of conduct that led to allegations of violating those obligations.

A. ETHICAL AND LEGAL OBLIGATIONS

In his April 15th floor speech, Ford identified three *Canons of Judicial Ethics* that he believed were violated by Justice Douglas.[12] First, Ford cited Canon 4, which deals with avoiding the appearance of impropriety.[13] More specifically, Canon 4 states that "[a] judge's official conduct should be free from impropriety and the appearance of impropriety" and, especially important for Ford's allegations against Douglas, a judge's "personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."[14] Second, Ford cited Canon 24, which states that judges "should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official function."[15] The third and final canon cited by Ford is Canon 31, which provides that a judge "should refrain from accepting *any* professional employment while in office."[16]

Despite listing the three canons at the outset of his speech on the House floor, Ford does not explicitly reference them the rest of his statement.[17] The lack of reference to the canons cited at the beginning of the speech is curious because by identifying these three canons early, Ford appears to place them at the center of his call for impeachment. However, the fact that they are not referenced again in his speech suggests the *Canons of Judicial Ethics* were not a central feature of his argument for impeaching Justice Douglas. Had the *Canons of Judicial Ethics* been Ford's primary reason for impeaching Justice Douglas, one would expect them to be featured more prominently throughout his floor speech.

The *Canons of Judicial Ethics* were not the only authority cited by Ford during his speech. In addition to those canons, Ford also cited two statutes pertaining to judicial conduct: 28 U.S.C. § 454 and 28 U.S.C. § 455.[18] Title 28, United States Code, section 454 addresses a similar topic as Canon 31, and it states that "any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."[19] The second provision

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by the ABA in 1924 (i.e., *forty*-six years before Ford gave this speech in 1970), and there is no record of a 1934 version. *See* Walter P. Armstrong, Jr., *The Code of Judicial Conduct*, 26 SMU L. REV. 708, 708 (1972). Therefore, it appears that Rep. Ford miscalculated the age of the *Canons* when referring to them as thirty-six years old and really meant to refer to the then-forty-six-year-old *Canons*.

12. 116 CONG. REC. 11,912 (1970).
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* (emphasis in original).
17. *See id.*
18. *Id.* at 11,915–16.
19. *Id.* at 11,916; *see also* 28 U.S.C. § 454 (1948).

cited by Ford, 28 U.S.C. § 455, says that a judge "should disqualify himself in any case in which he has a substantial interest . . . or is so related to *or connected with any party* or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal or other proceeding therein."[20] Both of these provisions involve judicial ethics, and they are cited by Ford in his speech advocating for the impeachment of or, at a minimum, investigation into Justice Douglas.[21]

B. SPECIFIC INSTANCES OF CONDUCT

The Ford speech on April 15, 1970, identified four main instances of conduct that warranted impeachment. The first involved a series of cases involving a publisher who was a party in multiple cases before the Supreme Court in which Douglas sat as a Justice. Ford argued that Douglas had personal dealings with this person and therefore violated judicial ethics by not recusing himself. The second problem identified by Ford involved Justice Douglas's book called *Points of Rebellion*, which, according to Ford, advocated for violent protests and riots against the government. Third, Ford argued that Douglas's publishing of articles in less-than-reputable magazines diminished the public's view of the Supreme Court. Finally, and perhaps most extensively, Ford argued that Douglas's involvement with a nefarious organization called the Parvin Foundation violated several ethical principles. This Part of the Note examines each of these incidents and the alleged ethical issues resulting from them.

1. THE *GINZBURG* CASE

The first instance of specific conduct identified by Ford in his floor speech was Justice Douglas's conduct as a judge in regard to the case of *Ginzburg v. Goldwater*.[22] This case involved an eccentric editor and publisher of a number of magazines, Ralph Ginzburg, and Republican Senator from Arizona and presidential candidate in the 1964 election, Barry Goldwater.[23] The underlying facts of this case are significant for two reasons. First, Ford discussed them at length in his floor statement advocating for the impeachment of Justice Douglas.[24] Second, the parties involved, particularly a fellow Republican colleague of Ford in Senator Barry Goldwater, illustrate the political undertones that colored this impeachment effort.[25]

The facts leading up to this case are discussed in detail in the lower court opinion.[26] Senator Goldwater brought a libel action against the defendant, Ralph Ginzburg, following the publication of the September-October 1964 issue of

20. *Id.* at 11,915 (emphasis in original); *see also* 28 U.S.C. § 455 (1948).
21. *See id.* at 11,919.
22. Ginzburg v. Goldwater, 396 U.S. 1049 (1970).
23. Goldwater v. Ginzburg, 414 F.2d 324, 327–28 (2d 1969).
24. 116 CONG. REC. 11,914 (1970).
25. *See infra* Part II.
26. Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir. 1969).

Ginzburg's magazine, *Fact*.[27] In this issue, *Fact* argued that Goldwater, the Republican nominee for the 1964 presidential election, was dangerous and unfit for office.[28] Ginzburg and the managing editor of *Fact* (and co-defendant in this case), Warren Boronson, conducted a survey of psychiatrists throughout the country and came to the conclusion that Goldwater was psychologically unfit.[29] The article in *Fact* was extremely critical of the Republican candidate, claiming that Goldwater was "paranoid," "sadistic," anti-Semitic, and "uneasy about his masculinity."[30] Representative Ford characterized the article in his floor speech as a "potent political hatchet job."[31] A federal court jury found in favor of Goldwater in the resulting libel action and awarded him $75,000 in punitive damages.[32]

Ford's allegations of judicial misconduct involve Justice Douglas's behavior regarding the appeal of this case.[33] After losing his appeal at the Second Circuit,[34] Ginzburg filed a writ of certiorari to the Supreme Court.[35] Although the Court ultimately denied Ginzburg's petition, Justice Douglas joined Justice Black's dissent, arguing that the First Amendment protected Ginzburg.[36] According to Ford, Justice Douglas's participation in this case and decision to join the dissent (thus ruling in Ginzburg's favor) constituted a violation of judicial ethics.[37] Ford noted that prior to this case being decided, Justice Douglas appeared as an author in another one of Ginzburg's magazines.[38] Published in March 1969, the article was titled "Appeal of Folk Singing: A Landmark Opinion."[39] Ford argued that publishing this article in Ginzburg's magazine was unethical for two main reasons. First, the byline of the article identified the author as "William O. Douglas, Associate Justice, U.S. Supreme Court."[40] According to Ford, this constituted an example of Justice Douglas "brazenly exploit[ing]" his judicial title.[41] The second ethical issue identified by Ford was that Justice Douglas accepted a payment of $350 from Ginzburg for his publication.[42] To Ford, accepting this payment created a conflict of interest for Justice Douglas that should have prevented him from taking part in the consideration of Ginzburg's writ of certiorari. Although

27. *Id.* at 328.
28. *Id.*
29. *Id.* at 329–30.
30. *Id.* at 332–33.
31. 116 CONG. REC. 11,914 (1970).
32. Goldwater v. Ginzburg, 414 F.2d 324, 327 (2d Cir. 1969).
33. *See* 116 CONG. REC. 11,914 (1970).
34. Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir. 1969).
35. *See* Ginzburg v. Goldwater, 396 U.S. 1049 (1970).
36. *Id.* at 1050 (Black, J., dissenting).
37. *See* 116 CONG. REC. 11,915 (1970).
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*

Ford did not cite any of the *Canons of Judicial Conduct* to support his argument, he did cite 28 U.S.C. § 455, which states that a federal judge "should disqualify himself in any case in which he has a substantial interest . . . or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."[43] Ford implied that by taking part in the *Ginzburg* case, Justice Douglas violated 28 U.S.C. § 455, which in turn constituted a violation of judicial ethics worthy of impeachment.[44] However, despite citing a statute pertaining to judicial conduct, Ford ends his discussion of the *Ginzburg* saga by simply asking whether Douglas's conduct constitutes "good behavior."[45] As opposed to tying his argument to specific, concrete rules of judicial conduct, Ford ultimately relies on the esoteric and subjective standard of good behavior.

2. OTHER PUBLICATIONS

Ford's second explicit allegation of judicial misconduct relates to Justice Douglas's book, *Points of Rebellion*.[46] Ford describes the book as a "fuzzy harangue evidently intended to give historic legitimacy to the militant hippie-yippie movement and to bear testimony that a 71-year-old Justice of the Supreme Court is one in spirit with them."[47] This allegation of misconduct is even less tied to concrete rules of judicial ethics. In fact, Ford's only ethical arguments behind this allegation are the vague "good behavior" standard and an unsupported prediction that the book may lead Justice Douglas to be perceived as biased if certain issues come before the Supreme Court.[48] As a whole, this section of Ford's argument for impeachment appears to be more revealing of Ford's personal distaste for Douglas's ideological views, rather than a genuine concern for judicial ethics. Ford insults Douglas's book, calling it "nonsense" and saying, "[t]he kindest thing I can say about this 97-page tome is that it is a quick read" and that "[h]ad it been written by a militant sophomore, as it easily could, it would of course have never found a prestige publisher like Random House."[49] In sum, Ford's biggest complaint about *Points of Rebellion* and other publications by Justice Douglas stem not from a concern about judicial ethics but rather personal disagreements with Douglas's style and ideology.

43. *Id.*
44. *Id.*
45. *Id; see also* U.S. CONST. art. III, § 1.
46. *Id.*
47. *Id.*
48. *See id.*
49. *Id.*

3. THE PARVIN FOUNDATION

The allegation most concretely tied to judicial ethics appears to be Ford's discussion of Justice Douglas's relationship with an organization called the Parvin Foundation. After a lengthy description of the Parvin Foundation,[50] Ford goes onto allege that Justice Douglas's involvement in the organization was unethical and warrants his impeachment.[51] Ford suggests that Douglas drafted the articles of incorporation for the foundation, which, if true, would be a violation of 28 U.S.C. § 454, which states that "any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."[52] This allegation clearly maps onto present-day Rule 3.10 of the *Model Code of Judicial Conduct*, which states that "[a] judge shall not practice law."[53] At the time Ford gave this speech, the prohibition of private law practice by a judge was stated in Canon 31, which Ford identified at the beginning of his statement. Ford also alleged that in 1961, Justice Douglas was named a board member of the foundation, elected president, and received an annual salary of $12,000.[54] Further, Ford argued that while on the board of the Parvin Foundation, Justice Douglas gave the foundation legal advice on how to respond to an investigation into the foundation that was supposedly being conducted by the Internal Revenue Service.[55] Of all the allegations of judicial misconduct levied against Douglas by Ford, the Justice's entanglement with the Parvin Foundation appeared to be the most concretely tied to the *Model Code of Judicial Conduct*.

4. EVALUATING THE PRIMACY OF JUDICIAL ETHICS IN FORD'S ARGUMENT

Even though Ford did identify multiple instances of established ethical rules potentially violated by Justice Douglas, the actual *Canons of Judicial Ethics* did not seem to play a primary role in his argument. Ford began his floor statement by identifying three *Canons of Judicial Ethics*.[56] However, he does not once return to or reference these canons again throughout the entire rest of his speech.[57] The two concrete sources of judicial conduct that Ford did mention were both statutes—not the *Canons*. The far more common standard by which Ford measures the ethical propriety of Justice Douglas's conduct is the vague

50. The Parvin Foundation was a non-profit charity organization that, among several other projects, focused heavily on improving education and development in Latin American countries. Ford's description of the Foundation implied that the organization's founder, Albert Parvin, was—at least in part—ideologically aligned with far-left leaders in Latin America.

51. *See* 116 CONG. REC. 11,916 (1970).

52. *Id.*

53. MODEL CODE OF JUD.CONDUCT R. 3.10 (2020) (hereinafter MODEL CODE).

54. 116 CONG. REC. 11,916 (1970).

55. *Id.*

56. *Id.*

57. *See id.*

concept of "good behavior."[58] Further, Ford ends his speech by arguing that "[p]ublic confidence in the U.S. Supreme Court diminishes every day that Mr. Justice Douglas remains on it."[59] Overall, an analysis of Ford's speech on the floor of the House of Representatives shows that although concrete rules of judicial conduct did play a role in his argument for impeachment, actual ethical rules were not the primary focus. Rather, "good behavior" and the broad concept of public confidence in the Judiciary seemed to play a much more prominent role.

II. POLITICAL MOTIVATIONS

After analyzing the extent to which Gerald Ford's impeachment allegations against Justice Douglas reflected genuine concern for judicial ethics, this section of the Note examines other possible motives behind the impeachment effort. There are two primary political motivations that may have been lurking behind the effort to impeach Justice Douglas. First, the effort may have been partially motivated by a desire amongst Republicans to retaliate after two of Richard Nixon's Supreme Court nominees were shot down. Second, one scholar has posited that Ford—who went onto become Nixon's Vice President—used the impeachment of Justice Douglas as a political strategy to draw attention away from President Nixon's invasion of Cambodia.

A. RETALIATION

Prior to Ford's floor speech in April 1970, Richard Nixon had put forth two nominees for the Supreme Court that were rejected by the Senate.[60] Ford talked about both of these nominees in the same speech in which he made the allegations against Justice Douglas.[61] Even though Ford explicitly states that retaliation for the two rejected nominations is *not* a factor in his decision to push for impeachment against Douglas,[62] there is a plausible argument that the effort to impeach Justice Douglas was at least in part fueled by resentment over the two failed Nixon nominees. In fact, Ford invoked the failed nominations in his speech against Douglas, saying that standard for judicial ethics should be applied evenly.[63] By invoking the failed Nixon nominations, Ford—intentionally or not—indicated that Republicans at the time were dismayed with the series of events that preceded Ford's speech. One such Republican, Vice President Spiro Agnew, explicitly voiced this dismay, saying that the two failed nominees "have been denied seats on the bench for statements that are much less reprehensible than those made, in my opinion, by Justice Douglas."[64] As the Vice President's statement

58. *See, e.g.*, *id.* at 11,915.
59. *Id.* at 11,919.
60. *See* Fred P. Graham, *A Major Setback*, N.Y. TIMES, April 9, 1970, at 1.
61. *See* 116 CONG. REC. 11,918 (1970).
62. *Id.*
63. *Id.*
64. Warren Weaver, Jr., *Inquiry by House on Douglas Urged*, N.Y. TIMES, Apr. 13, 1970, at 1, 27.

demonstrates, at least some Republicans compared the two failed Nixon nominees to Justice Douglas.

In addition to Vice President Spiro Agnew's comments, reporting at the time supported the view that Republicans were motivated to bring impeachment charges against Douglas because of the two failed nominees.[65] In fact, contemporaneous reporting suggested that there was a direct link between the defeat of Nixon's second nominee and Ford's decision to pursue impeachment against Douglas: "When news of Carswell's defeat reached the House floor, it is understood that several congressmen immediately approached Ford. They were angry and emotional. In effect, they laid down an ultimatum: either Ford would act on Douglas or one of them would."[66] If such reports are to be believed, then clearly the impeachment of Justice Douglas was at least partially influenced by Nixon's failed nominees.

A second indication that the impeachment of Justice Douglas may have been fueled by an urge to retaliate for the unsuccessful nominees lies in the mere timing of the event. As discussed above, President Richard Nixon suffered the defeat of two of his nominees to the Supreme Court before the Douglas impeachment effort began in full.[67] The first nominee was Fourth Circuit Judge Clement Haynsworth, and the second was Fifth Circuit Judge G. Harrold Carswell.[68] The timing of these two failed nominations, particularly the latter, indicates that retaliation may have indeed played a role in motivating the call for Justice Douglas's impeachment. Ford's floor speech on April 15, 1970, came only one week after the denial of Judge Carswell by the Senate.[69] The strikingly close proximity of these two events provides evidence that political retaliation may indeed have been a consideration for members of Congress who supported the impeachment inquiry of Justice Douglas.[70]

B. NIXON'S INVASION OF CAMBODIA

Another political motivation that may plausibly have influenced the effort to impeach Justice Douglas was President Nixon's decision to invade Cambodia.[71]

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65. *See* Richard Sachs, "Role of Vice-President Designate Gerald Ford in the Attempt to Impeach Associate Supreme Court Justice William O. Douglas," Box 229, Folder "Role of GRF in the Attempt to Impeach William O. Douglas" of the Gerald R. Ford Vice Presidential Papers at the Gerald R. Ford Presidential Library (Oct. 24, 1973), https://www.fordlibrarymuseum.gov/library/document/0023/1687418.pdf [https://perma.cc/5G57-SAUG] ("After the Carswell defeat, conservative emotions intensified.").

66. *Id.* at 8.

67. *See* Graham, *supra* note 60.

68. *See id.*

69. *See* Sachs, *supra* note 65, at 8.

70. *See* Johsua Kastenberg, *Safeguarding Judicial Integrity During the Trump Presidency: Richard Nixon's Attempt to Impeach Justice William O. Douglas and the Use of National Security as a Case Study*, 40 CAMPBELL L. REV. 113, 116 (2018) ("When the Senate failed to confirm his first two nominations, Nixon and his allies sought to use the impeachment of Douglas as payback.").

71. *See generally* JOSHUA KASTENBERG, THE CAMPAIGN TO IMPEACH JUSTICE WILLIAM O. DOUGLAS: NIXON, VIETNAM, AND THE CONSERVATIVE ATTACK ON JUDICIAL INDEPENDENCE (2019).

Professor Joshua E. Kastenberg has argued that Ford's speech outlining the allegations of impropriety against Justice Douglas was designed and executed in order to provide political cover for President Nixon.[72] According to Kastenberg, the impeachment of Justice Douglas "would have served as a public distraction that enabled his administration to move forward with the controversial invasion of Cambodia with far less public outcry."[73] Kastenberg cites a number of other scholars who concluded that in delivering his floor speech advocating for the impeachment of Justice Douglas, Representative Ford was acting at the behest of President Nixon.[74] Of course, Nixon did subsequently choose Gerald Ford to be his Vice President in the 1972 presidential election.[75] Although the evidence demonstrating the impeachment speech given by Ford was aimed at providing political cover for Nixon is circumstantial, the timing of this sequence of events does lend credence to this theory. It was not even two weeks after Ford delivered his speech on the House floor when President Nixon ordered the ground invasion of Cambodia.[76] As Kastenberg concludes, the "timing of Ford's speech and the Cambodian invasion were likely more than coincidental."[77] Although definitively proving that Ford's impeachment efforts were merely a political tool may be impossible, Kastenberg's research makes a compelling case that political considerations, namely President Nixon's invasion of Cambodia, played at least some role in the impeachment saga.

Even if Ford's decision to pursue Douglas's impeachment was not directly tied to Nixon's invasion of Cambodia, there is still more evidence that there were general political motivations. For example, the prevailing attitude as the 1970 midterm elections approached was that public opinion was against Justice Douglas, and members of Congress stood to gain by supporting his impeachment.[78] Especially in today's climate, it is not difficult to imagine the Supreme Court being used as a political issue ahead of an election.[79] Further, there is also evidence that Ford coordinated with officials in Nixon's White House about the impeachment of Justice Douglas.[80] However, White House Press Secretary Ron Zeigler denied any role in Ford's impeachment campaign and stated that "[t]here

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72. *See* Kastenberg, *supra* note 70, at 170.

73. *Id*. at 121.

74. *Id*. at 118.

75. *See Ford for Vice President*, N.Y. TIMES, Oct. 13, 1973, at 34.

76. Kastenberg, *supra* note 70, at 114–15.

77. *Id*. at 170.

78. *See* Sachs, *supra* note 65, at 15; *see also* Lyle Denniston, "Pressure Building in House for Douglas Impeachment," SUNDAY STAR (June 14, 1970); Willard Edwards, "Word for Douglas Case – Delay," CHI. TRIB. (July 2, 1970).

79. *See* Joan Coaston, *Polling data shows Republicans turned out for Trump in 2016 because of the SupremeCourt*, VOX (June 29, 2018), μ https://www.vox.com/2018/6/29/17511088/scotus-2016-election-poll-trump-republicans-kennedy-retire [https://perma.cc/7RDL-TJNA].

80. *See* Sachs, *supra* note 65, at 2 ("As part of the investigation, Ford contacted White House aide Clark Mollenhoff who, as a former journalist, had written several articles on Douglas's position with the Parvin Foundation.").

is no involvement and no concentration on this matter from the White House."[81] Once again, definitively proving Ford's internal motivations behind the impeachment proceedings is impossible, but evidence does exist that political considerations played a role.

C. IMPLICATIONS FOR JUDICIAL ETHICS

While Kastenberg's article identifies two primary dangers of using impeachment of a Justice of the Supreme Court to provide political cover (i.e., politicization of the judiciary and judicial independence), this Note argues that there is a third danger that warrants consideration: using judicial ethics as a pretext for political goals erodes respect for the *Model Code of Judicial Conduct*. Whether Ford's allegations and impeachment efforts against Justice Douglas were motivated by genuine concern for judicial ethics is relevant because it reflects the amount of respect public officials have for judicial or legal ethics as a whole. Furthermore, the use of judicial ethics as a pretext for political motivations diminishes the impact of whether Justice Douglas actually *did* violate judicial ethics. As demonstrated in Part I.B.4 of this Note, there were colorable claims of misconduct and corresponding canons of judicial ethics that may have been legitimately implicated. Ford's failure to articulate a concrete argument for how Justice Douglas violated these canons undermines respect for the *Model Code of Judicial Conduct*.

III. DOUGLAS'S RESPONSE

As Part IV of this Note explains, the *Model Code of Judicial Conduct* does not provide specific guidance on how judges should ethically respond to impeachment efforts waged against them.[82] As a result, there is not an objective ethical standard with which to evaluate Justice Douglas's response, other than the broad principles laid down in other rules.[83] However, an analysis of Douglas's response to the impeachment effort against him provides insight into the ethical considerations a judge facing impeachment charges may encounter. An analysis of Justice Douglas's personal letters demonstrates that he took the allegations of ethical violations seriously, as if judicial ethics *were* the legitimate reason for the inquiry, but he ultimately viewed the impeachment effort as politically motivated.

A. DOUGLAS TOOK THE ALLEGATIONS SERIOUSLY

Douglas's letters reveal that he took the impeachment effort against him seriously, as opposed to dismissing it as a sham. Less than two weeks after Gerald Ford's floor speech, Justice Douglas wrote to Rep. Emanuel Celler—Chairman of the House Judiciary Committee responsible for the impeachment inquiry—

81. *Id.* at 12.
82. *See infra* Part IV.
83. *See id.*

that Douglas had retained Simon H. Rifkind to represent him in the proceedings.[84] Rifkind was a highly acclaimed lawyer who, after his service as U.S. District Judge, became a named partner at the large New York law firm of Paul, Weiss, Rifkind, Wharton, & Garrison LLP.[85] Further, Douglas indicated to Chairman Celler that he would cooperate to the fullest extent.[86] By retaining a high-powered lawyer and instructing him to cooperate, Justice Douglas indicated that he understood the severity of allegations of ethical misconduct.

Perhaps the strongest evidence that Douglas took the impeachment proceedings seriously is his lengthy correspondence with the former Attorney General, Ramsey Clark. In a series of letters in April and May of 1970, Justice Douglas rebutted Ford's accusations of ethical violations, particularly those involving conflicts of interest.[87] Douglas acknowledged to Clark that his "publications at times raised conflicts of interest" but argued that whenever a true conflict arose, he behaved properly by recusing himself.[88] Douglas cited multiple cases for which he recused himself because of conflicts of interest.[89] Justice Douglas explicitly acknowledged the rules of judicial ethics when discussing his recusals, saying that "[m]y decision not to sit in the *Cowles* cases and the *Playboy* cases but to sit in others conforms, I think, to Canon 4 of the ABA Canons of Judicial Ethics."[90] For the cases identified by Ford in which the Justice did *not* recuse himself, Douglas justified his behavior by arguing that no conflict of interest existed.[91] For the *Ginzburg* case,[92] Douglas argued that he "did not realize [the magazine he was published in] had any connection to Ginsburg [sic]."[93] In response to Ford's allegation regarding Douglas's book, the Justice argued that he "had nothing to do with placing a portion of my book" in the magazine and instead that it "was done by my publisher without my knowledge and without consulting me or my office."[94] Douglas did admit that he occasionally submitted articles to the

84. Letter from William Douglas to Emanuel Celler (Apr. 27, 1970), *in* THE DOUGLAS LETTERS 395 (Melvin Urofsky ed., 1st ed. 1987).

85. *About the Firm: History*, PAUL WEISS, https://www.paulweiss.com/about-the-firm/history [https://perma.cc/9UCF-NPME] (last visited Jan. 13, 2022).

86. Letter from William Douglas to Emanuel Celler (Apr. 27, 1970), *in* THE DOUGLAS LETTERS 395 (Melvin Urofsky ed., 1st ed. 1987) ("I have instructed [Rifkind] to make anything in my files, which you deem relevant, available to you, whether it concerns Court records, correspondence files, financial matters, or otherwise.").

87. *See* WILLIAM O. DOUGLAS, THE DOUGLAS LETTERS 392–407 (Melvin Urofsky ed., 1st ed. 1987).

88. Letter from William Douglas to Ramsey Clark (Apr. 28, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 396–97.

89. *Id.* at 397 (citing Polizzi v. Cowles Magazine Inc., 344 U.S. 853 (1952) & Grove Press Inc. v. Maryland State Board of Censors, 401 U.S. 480 (1971)).

90. Letter from William Douglas to Ramsey Clark (May 7, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 402–03.

91. *See supra* note 88.

92. Ginzburg v. Goldwater, 396 U.S. 1049 (1970).

93. *Supra* note 87, at 397.

94. *Supra* note 90.

New York Times and was paid "the going rate"—$150-$300.[95] However, Douglas contended that his "relation to the *Times* has been so slight and so casual that I have not hesitated to sit in a *New York Times* case."[96] Finally, in yet another lengthy letter to Clark, Justice Douglas discussed in detail the reasons why a Justice may recuse themselves, thus demonstrating a thorough understanding of the rules regarding conflicts of interest.[97] Overall, Justice Douglas's extensive discussion of the rules of judicial ethics suggests that he viewed such ethical rules as highly important.

B. DOUGLAS SAW THE IMPEACHMENT AS POLITICAL

Although Justice Douglas took the allegations of ethical violations seriously, he nevertheless saw Ford's movement to impeach him as politically motivated and repeatedly expressed frustration over being targeted in the public arena. After a 924-page report was released by a House subcommittee tasked with handling the impeachment inquiry, Douglas called the report "a political document."[98] He expressed his belief that the impeachment allegations were politically driven, saying, "I am sure Nixon, Agnew, Mitchell and Ford put tremendous pressure" on the House Republicans responsible for handling impeachment.[99] He offered a frank assessment of his view of the Republicans' actual motivations: "The Administration has its eye on my seat. They want me off, and I am sure they are going to try very hard to get a new committee and get hearings going."[100] Douglas's sentiment clearly suggests that, in his opinion, the impeachment effort against him was not motivated by genuine concern but rather the political goals of the actors behind it. Although he expressed his opinion privately, there is no evidence that Justice Douglas publicly criticized the impeachment proceedings as political. In fact, Douglas privately expressed frustration that he was unable to publicly rebuke what he saw as bad-faith allegations. He wrote that "[i]t is very difficult, as you can imagine, to be in public liege and not be able to reply at all to much of the harsh and unfair and even malicious things that are said about you."[101] However, despite his feeling that it was "almost impossible to stay silent" in the face of such scrutiny, he maintained the importance of not reacting publicly, saying: "I cannot have a press conference and make statements."[102]

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95. *Id.* at 402.

96. *Id.*

97. Letter from William Douglas to Ramsey Clark (May 5, 1970), Letter from William Douglas to Ramsey Clark (May 7, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 398–403.

98. Letter from William Douglas to Simon Rifkind (Dec. 4, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 410.

99. *Id.*

100. *Id.*

101. Letter from William Douglas to Betty B. Fletcher (Nov. 23, 1970), Letter from William Douglas to Ramsey Clark (May 7, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 408.

102. *Id.*

Douglas's internal views about the actual motivations behind the campaign to impeach him likely added to his frustration.

Douglas was not alone in suspecting that Ford's impeachment crusade had political motivations. According to news reports, a group of high-profile acquaintances of Douglas reportedly shared the same sentiment.[103] These close advisors included Clark Clifford (the former Secretary of Defense), Benjamin Cohen (one of the original New Deal "brain trusters"), and David Ginsburg (a former Douglas clerk).[104] These confidants to Douglas saw the impeachment as "nothing less than an effort by the Nixon Administration to stiffle [sic] dissent and build a campaign issue for the fall election."[105] Further, "[a]fter analyzing Ford's statement and the impeachment resolution, they concluded—over Ford's strong denial—that the [Nixon] Administration was deeply involved in it all."[106] These sentiments that Douglas apparently shared with his advisors suggest that Douglas viewed the impeachment against him as political.

C. POTENTIAL TARGETS OF CRITICISM

Although Douglas's response displayed a level of appreciation for the rules of judicial ethics, his response was not without potential targets of criticism. There are three potential areas of criticism that came out of Douglas's response to the impeachment effort. First, Douglas may have reacted to the impeachment allegations by changing his behavior. Second, Douglas appeared to communicate with at least one other Justice about his impeachment. Finally, Douglas adopted a position on impeachment that minimized the importance of the rules of judicial ethics.

1. CHANGES IN DOUGLAS'S BEHAVIOR

After Ford's speech on the House floor, there are at least two changes in Douglas's behavior that could subject him to criticism. First, based on his private letters, it appears that Justice Douglas may have delayed his retirement due to the impeachment efforts.[107] The day before Ford made his speech on the House floor, Douglas wrote to an acquaintance: "I wrote you on February 6 that I was planning to retire this Summer. But now, I understand there will be impeachment proceedings started against me. So I do not plan to retire."[108] Although the *Model Code of Judicial Conduct* says little about the ethics of a judge's retirement, the appearance of a Justice of the Supreme Court delaying his retirement to spite political

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103. *See* Milton Viorst, *Bill Douglas Has Never Stopped Fighting The Bullies of Yakima*, N.Y. TIMES MAG. (June 14, 1970) at 5.

104. *Id.*

105. *Id.* at 52.

106. *Id.*

107. *See* Letter from William Douglas to Charles Horowitz (Apr. 14, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, 393

108. *Id.*

enemies may be seen by some to undermine public confidence in the judiciary.[109] Obviously, whether a judge's actions undermine confidence in the judiciary is an open-ended question subject to much interpretation. The ABA's test for "impropriety"[110] is "whether the conduct would create reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."[111] When considering Justice Douglas's apparent decision to delay retirement because of the impeachment, the ABA's definition of impropriety may be relevant.

The second arguable change in Douglas's behavior was his decision to recuse himself in a case involving *Look* magazine. Less than two weeks after Ford gave his speech on the House floor, Justice Douglas announced that he would be disqualifying himself from a case involving *Look* magazine before the Supreme Court.[112] Although there is no direct evidence to suggest that this disqualification was based on the impeachment proceedings, Ford argued that this decision was tantamount to a "tacit admission" that Douglas should have disqualified himself from the *Ginzburg* case.[113] Although Douglas's decision has a perfectly innocent explanation (i.e., that there was a genuine conflict of interest and Douglas was merely adhering to ethical rules), his actions were clearly under more scrutiny, as is evidenced by Ford's reaction to the disqualification.

2. DOUGLAS'S COMMUNICATIONS

A second aspect of Douglas's response to the impeachment campaign that may have been a target of criticism is his communication with Chief Justice Earl Warren.[114] Although the evidence that such communication took place is indirect, Douglas's letters indicate that he spoke to the Chief Justice about how he should respond to the impeachment frenzy.[115] Douglas sent a letter to his attorney, Simon H. Rifkind, in which he disclaimed, "[t]his is not a word of advice, only an account of a conversation with Earl Warren."[116] Douglas then relayed to Rifkind that Chief Justice Warren told him "it might be a good idea at some state to take the deposition of Ford and Wyman, pinning them down to the emptiness of their charges."[117] This letter suggests that Justice Douglas and Chief Justice Warren discussed how Douglas should respond. Although there is no ethical rule

109. *See* MODEL CODE R. 1.2.
110. MODEL CODE R. 1.2.
111. MODEL CODE R. 1.2 cmt. 5.
112. *Douglas to Skip 3 Court Rulings*, N.Y. TIMES, Apr. 28, 1970, at 1.
113. Sachs, *supra* note 65, at 13.
114. *See* Letter from William Douglas to Simon Hirsch Rifkind (June 10, 1970), *in* THE DOUGLAS LETTERS, *supra* note 86, at 406.
115. *Id*.
116. *Id*.
117. *Id*.

prohibiting a Justice from speaking about impeachment charges they are facing with other Justices,[118] these consultations raise concerns about whether it is improper for a judge to be strategizing a response to their impeachment with their colleagues on the bench. For Republican critics of both Justice Douglas and Chief Justice Warren, news that such conversations were taking place may have been a ripe target for criticism.

3. DOUGLAS'S EXCLUSION OF ETHICAL RULES FROM IMPEACHMENT CRITERIA

Finally, Douglas's response may be subject to criticism because his formulation of the standards for an impeachable offense seems to imply that violations of judicial ethics are irrelevant to a judge's impeachment. Throughout the Douglas impeachment saga, the question of what constitutes an impeachable offense dominated the debate.[119] However, as the impeachment proceedings progressed—mainly in the form of the House subcommittee created to investigate Ford's allegations—dueling standards for impeachment arose.[120] In order to research this question, Ford retained a Detroit law firm, which then undertook a study on the question of what constitutes an impeachable offense.[121] Bethel B. Kelley's memorandum on behalf of the firm concluded that the commission of a high crime or misdemeanor was *not* necessary for impeachment.[122] Kelley's memorandum argued that "[i]f a judge's misbehavior is so grave as to cast substantial doubt upon his integrity, he must be removed from office regardless of all other considerations."[123] After reading Kelley's memorandum, Justice Douglas's lawyer, Simon Rifkind, countered with his own memorandum outlining the standards for what constitutes impeachable conduct.[124] Rifkind lambasted the Kelley memorandum, arguing that the other side's definition of an impeachable offense was "so utterly destructive of the principles of an independent judiciary and the separation of powers that [he] could not believe that convincing historical support could be found for so radical a proposition."[125] Rifkind went even further, saying that after reading Kelley's memorandum on behalf of Ford, he was "more than ever convinced that Mr. Ford's view is historically and legally untenable as it is mischievous."[126]

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118. *See infra* Part IV.

119. *See* 116 CONG. REC. 11,913 (1970) (statement of Rep. Ford) ("[A]n impeachable offense is whatever a majority of the House of Representatives considers it to be at a moment in history.")

120. *See* Sachs, *supra* note 65.

121. *Id*. at 18.

122. *Id*.

123. *Id*.

124. *Id*.

125. *Id*.

126. *Id*. One can speculate on the meaning of the word "mischievous" here, but given Douglas's view that the impeachment was politically motivated, supra Part III.B, a plausible reading of Rifkind's word choice suggests Rifkind may have been referring to political gamesmanship.

These dueling memoranda on the standards of impeachable conduct offer starkly contrasting conclusions on what is required for impeachment. Whereas Ford, through the private firm he tapped to research this question, concluded that high crimes or misdemeanors are not a prerequisite for impeachment, Douglas's lawyer Simon Rifkind reached precisely the opposite conclusion.[127] Rifkind's memorandum concluded that the "constitutional language, in plain terms, confines impeachment to 'Treason, Bribery, or other high Crimes and Misdemeanors.'"[128] However, because violating the rules of judicial ethics do not constitute treason, bribery, crimes, or misdemeanors, the clear implication of Rifkind's position is that ethical rules can never form the basis of impeachment for federal judges. Such a position advocated for on behalf of Justice Douglas may thus subject Douglas to criticism for downplaying the seriousness of ethical violations. It must be noted that neither Kelley's nor Rifkind's formulations of impeachment standards place heavy emphasis on the rules of judicial ethics. Nevertheless, Douglas's position on impeachable conduct can be criticized as minimizing the importance of upholding the *Canons of Judicial Ethics*.

IV. A PROPOSED NEW RULE

Even though the evidence suggests that the movement to impeach Justice Douglas did not substantially hasten his retirement or ruin public confidence in the Supreme Court,[129] the episode can still be used to inform contemporary conceptions of model judicial conduct. Drawing upon the lessons of the efforts to impeach Justice Douglas, this Note argues that a new rule that specifically identifies the flexible nature of impeachment would provide firmer guidance for judges facing impeachment campaigns than currently exists in the *Model Code of Judicial Conduct*. This rule would supplement, not supplant, the existing framework regarding judicial conduct, and it is necessary because of the same rationale that underlies the current *Model Code of Judicial Conduct*, as well as the constitutional structure of the United States government.

A. THE RULE

The proposed rule would read: "A judge shall refrain from publicly acknowledging impeachment efforts, especially when those efforts have political goals or arise out of political disagreements with a judge's decision." This rule is purposefully phrased broadly, not limiting itself to strict definitions of "impeachment efforts" and accommodating of the many ways, as evidenced by some members

127. *See id.*

128. Joe D. Waggonner Jr., Louis C. Wyman, Gerald R. Ford, Robert Price, and Charles H. Griffin, *Impeachment of Associate Justice Douglas* (1970), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1022&context=publicity [https://perma.cc/YS3S-KMZC].

129. *See* Lesley Oelsner, *Douglas Quits Supreme Court; Ford Hails 36½-Year Service,* N.Y. TIMES, Nov. 13, 1975, at 1.

of Congress' efforts to impeach William Douglas, a pressure campaign can involve subtle political goals. This rule would add to—not replace—the current rules of judicial conduct. Some of these rules were valuable in analyzing the Douglas impeachment campaign. Specifically, Rule 1.2 ("Promoting Confidence in the Judiciary")[130] and Rule 2.4 ("External Influences on Judicial Conduct")[131] provide relevant tools with which to evaluate Justice Douglas's response to the impeachment campaign against him. In fact, the Douglas impeachment episode shows that this proposed rule may best be categorized under the umbrella of Rule 2.4 as a subsection. By identifying impeachment as a specific type of external influence, this rule would go beyond Rule 2.4(a), which merely identifies "public clamor" and "criticism."[132] As demonstrated by the movement to impeach Justice Douglas, as well as the special power impeachment holds,[133] an impeachment campaign can involve more than just clamor or criticism.

B. WHY A NEW RULE IS WARRANTED

This proposed new rule, drawn from the lessons of the movement to impeach William O. Douglas, is warranted for three reasons. First, it fortifies the concerns identified in Rule 1.2[134] and 2.4[135], as well as the rationale behind Rule 1.2.[136] Second, such a rule upholds the theoretical and constitutional underpinnings of the impeachment procedure, especially when used against a member of the judicial branch. Finally, this new rule is warranted because there is evidence that the movement to impeach Justice Douglas was not a fluke, and impeachment efforts against prominent members of the judiciary may well rise again.

1. FORTIFYING EXISTING RULES AND RATIONALE

As discussed earlier in this Section, the proposed rule would supplement the current framework and rules of the *Model Code of Judicial Conduct*.[137] A particularly revealing observation that supports the inclusion of the proposed rule is made by Comment 2 to Rule 1.2, which states that "[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code."[138] This Comment is insightful and consistent with the proposed rule for two reasons. First, it acknowledges that judges may be easy targets for public scrutiny, which

130. MODEL CODE R. 1.2.
131. MODEL CODE R. 2.4.
132. MODEL CODE R. 2.4(a).
133. *See* U.S. Const. art. II, § 4 ("removed from Office").
134. MODEL CODE R. 1.2 ("Promoting Confidence in the Judiciary").
135. MODEL CODE R. 2.4 ("External Influences on Judicial Conflict").
136. MODEL CODE R. 1.2 cmt. 2 ("A judge should expect to be the subject of public scrutiny.").
137. *See supra* Part IV.A.
138. MODEL CODE R. 1.2 cmt. 2.

may even take the form of an impeachment campaign.[139] A new rule that provides guidance on how to handle a particular type of public scrutiny (i.e., an impeachment campaign) would equip judges with a simple framework to govern their responses if such a situation were to arise. Second, Comment 2's assertion that judges "must accept the restrictions imposed by the Code" provides a basis for a rule that would prohibit a judge from speaking out in response should they feel the urge.[140] The proposed rule's requirement to refrain from publicly commenting on an impeachment is consistent with the notion underlying Comment 2, which is that being a judge comes with certain responsibilities that may require a judge to act in conformance with the *Code* rather than the judge's individual impulses.

2. THEORY AND CONSTITUTIONAL STRUCTURE

The proposed rule requiring judges to refrain from publicly commenting on an impeachment campaign against them is also warranted because it supports the theory of separation of powers. An article by Professor Paul McGreal sheds some light on this justification for the proposed rule.[141] In discussing the power of the judicial branch, McGreal references the often-used adage that "Congress has the power of the purse, the President has the power of the sword, and the judiciary has the power of persuasion."[142] McGreal goes on to say that "the judiciary's power lies in its ability to persuade us that its decisions are correct" and that judges' "ability to persuade rests on our willingness to credit their explanations—their opinions—as the genuine reasons for their decisions, and not attribute their decisions to an ulterior motive."[143] McGreal concludes his article with a stern warning that judges should attempt to avoid the appearance of being political, saying that "judges playing politics is tantamount to judicial suicide."[144] This article effectively articulates the dangers of judges appearing to wade in on a political issue. In light of the efforts to impeach Douglas, however, it is possible for an impeachment campaign to have implicit political goals.[145] By forcefully responding to the efforts to impeach him, Justice Douglas may have been seen as wading into a political issue, thus triggering the dangers outlined by the McGreal article. The proposed rule would be especially helpful in this case because by requiring that judges refrain from acknowledging impeachment efforts, the rule would prevent the appearance of political activity by a judge.

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139. MODEL CODE R. 1.2 cmt. 2.

140. MODEL CODE R. 1.2 cmt. 2.

141. *See generally* Paul McGreal, *Impeachment as a Remedy for Ethics Violations*, 41 S. TEX. L. REV. 1369 (2000).

142. *Id*. at 1373.

143. *Id*.

144. *Id*. at 1388.

145. *See supra* Part II.

3. THE IMPEACHMENT MOVEMENT MAY NOT HAVE BEEN A FLUKE

The third reason the proposed rule is warranted is that the impeachment campaign against Justice Douglas was not necessarily an isolated incident, and impeachment has been wielded as a political tool since then and may well be done so in the future.[146] As such, the *Model Code of Judicial Conduct* should provide more concrete guidance for judges if and when an impeachment campaign occurs again. The impeachment efforts against Warren and Douglas can be used as lessons if and when impeachment is levied against a judge again.

CONCLUSION

The effort to impeach Justice William O. Douglas has been the subject of much research and scholarship. However, the vast majority of that scholarship has focused on the historical and political aspects of the impeachment campaign. This Note has focused on the implications of Justice Douglas's experience on legal and judicial ethics. This Note argues that Congressman Gerald Ford impeachment allegations contained minimal reference to the rules of judicial ethics, opting instead for the broad, less concrete standard of good behavior. Further, there are multiple plausible motivations for Ford's impeachment effort that do not implicate a genuine concern for judicial ethics. Douglas's response to the impeachment episode demonstrated respect for the rules of judicial ethics, but because the *Model Code of Judicial Conduct* does not provide guidance on how to respond to impeachments, this Note proposes a new rule requiring no public reactions in order to provide the missing guidance an maintain respect for and confidence in the judiciary.

146. *See generally* Brett Bethune, *Influence Without Impeachment: How the Impeach Earl Warren Movement Began, Faltered, but Avoided Irrelevance*, 47 J. SUP. CT. HIST. 142 (2022); *see also* Bess Levin, *Could Brett Kavanaugh be Booted from the Supreme Court?,* Vanity Fair (Mar. 16, 2021), https://www.vanityfair.com/news/2021/03/brett-kavanaugh-fake-fbi-investigation [https://perma.cc/XKH8-VZ6A].