Welcome to the Let’s Talk Government Podcast. A podcast that is provided for you by the department of government at Minnesota State University, Mankato. Located in Minnesota in the United States. I am your host Dr. Pat Nelson, the chairperson of the government department. I want to thank you for joining us as we explore different topics about government. Some may be surprising to you and some may not, so please enjoy.

Dr. Pat Nelson:

Welcome to episode 20 of the Let's Talk Government Podcast: impeachment constitutional questions and impact. I'm joined by Dr. Fred Slocum and Dr. Kevin Parsneau now from the Political Science Program at Minnesota State University Mankato. So thank you for joining me today, so let's start off with you Dr. Slocum, what is impeachment? Why do we have it?

Dr. Fred Slocum:

Impeachment is a process that is spelled out in the Constitution that allows for a President or another federal official possibly, it's not limited to Presidents only, but a federal official can be disciplined for misconduct through the impeachment process and it requires a vote of impeachment which amounts to a vote of accusation of wrongdoing, which is conducted by the House of Representatives and then, following successful vote of impeachment in the house which takes a majority of the house. So, out of 435 house members that would be a minimum of 218 and following a successful vote of impeachment in the house then the Senate will hold a trial, which is not a criminal trial, this is a political process not a legal process in which all 100 Senators affect as quasi jurors. And to convict the President of wrongdoing requires 67 Senators or two-thirds of the membership of the Senate. And this process is spelled out in the Constitution as a means of attacking or limiting the power of the Executive. Which the Framers were deeply concerned over given their experiences under the English crown during the colonial era.

Dr. Pat Nelson:

Alright, so thank you Dr. Slocum, that's a great explanation. So I'm going to turn to you Dr. Parsneau, so let's focus on some of the arguments they used in the trial about whether they should be impeaching or not and kinda go from there.

Dr. Kevin Parsneau:

I think the the main argument laid out by, I guess call them the prosecution, from the house was that President Trump acted in such a way over the [inaudible] important people focus just on that that speech he gave on the 6th, but before that for the time since the election his accusations that there had been a fraudulent stealing of the election, there were fraudulent votes and all these other claims that we're not at all supported by the facts, that those statements along with telling people that they had to stop the steal and then having the group, having the crowd go to the capital and telling them well, you've got to go there or you’re going to lose your country. Right so, the prosecution's case is basically that you built up a bunch of people to be concerned that they were going to have their constitution and their Republic taken away from them if they didn't prevent Congress from making Joe Biden President. And then you sent them to the capital. What do you expect Americans to do if they think they are going to lose their Republic, right? So that was the one side, the flip side of course was that the defense sort of claimed, well one, he's not President anymore you can’t impeach him if he’s not President. Which I think is a legally flawed claim, but that aside, that was their claim. That appeared to be the out that a lot of Republican Senators took. But their other argument was, well it's freedom of speech, he's giving a speech lots of people say things like “fight”, you know “go fight”, this is horrible and he said peacefully once in the speech right so they claim well, he's exercising freedom of speech, he didn't have any knowledge that this was going to happen. It was already pre-planned by some of the rioters so they went and did it on their own and so your case is not fair to President Trump. And of course they played a lot of other speeches of Democrats saying things like “we got to fight for this or not”. Of course, most of those were taken out of context. But all that aside, that was the argument they were making.

Dr. Fred Slocum:

And Trump also used the language “fight like hell”

Dr. Pat Nelson:

Right

Dr. Parsneau:

There were plenty of references to fighting. It all depends when you take Donald Trump figuratively and literally. And he's come a long ways in life having people listen to him and not be sure when he's being figurative and literal and he always will claim, well “fight” doesn't mean beat cops up with with flags, it means stand out there and yell. And this has been the case his whole Presidency, if not his public whole life. He’ll say stuff “back in the old days we wouldn’t let a person protest like that, we would be a little tougher”. And people would say, “are you saying to be violent to anyone who protests your rallies”? [Trump]”Oh no, I’m not saying that, I am just saying back in the old days”. So he's always gone along that line and done it for a long time without getting into trouble.

Dr. Nelson:

Some of the accusation also included his lack of action afterwards, right, where he was not taking action that he was actually was supporting what was going on on Twitter and the fact that he didn't take action afterword was also can with a wrapped into it.

Dr. Parsneau:Yeah, that’s trub, right because the argument that he actually intended for that to happen. And he said peacefully, but if he actually intended for it to be peaceful, the prosecution is saying, “if you intended it to be peaceful, why didn't you say something as soon as it wasn't peaceful”? And he didn’t right, and he waits a long time and then later he says “go home we love you” after a lot of violence has already taken place. That, that's not the behavior of someone who didn't intend, right that’s their case.

Dr. Nelson:

So, the talking about impeachment on a grand scale is what can an executive be impeached for? Obviously if he's just lying or making statements about you should the election is a fraud, that’s probably not enough to impeach him. What would be things that you could impeach a President for?

Dr. Slocum:

The constitution says the specific language in the constitution is “high crimes and misdemeanors”. What that means is not spelled out in the Constitution, it's not spelled out in our other founding documents. The meaning of what that means is really left up to Congress to decide. The house and the impeachment you know, in the impeachment stage and the Senate and the conviction stage. So it really is left entirely up to congress's judgement to stipulate or decide what constitutes high crimes and misdemeanors.

Dr. Nelson:

So we know that the latest one with President Trump or former President Trump was Insurrection, encouraging and insurrection. What about his first impeachment trial? What was he charged with there? Was that a perjury one where lying?

Dr. Parsneau:

No, it was because he was using the powers of the Presidency against political enemies.

Dr. Nelson:

The undue influence then.

Dr. Parsneau:

Yeah, the undue influence. Because he tried to get the president of Ukraine to announce that there was an investigation of Biden. And was supposedly withholding military aid, which Ukraine needed desperately in order to do that. So that was a big part of the impeachment.

Dr. Slocum:

That was the first impeachment, correct. I had dropped out in her question so I didn't hear all of it. The first impeachment was for basically extorting Ukrainians leader, Ukraines leader into investigating Hunter Biden, Joe Biden's son. And using the threat of the cut off of military aid to Ukraine as leverage in that pressure campaign.

Dr. Nelson:

So really impeachment, especially at the President level is something, you've committed a crime or something that you could only do because you're president so if you weren't president you wouldn’t have had the same thing occur.

Dr. Parsneau:

Definitely misuse of Presidential Power. One of the things that I think is odd about this, not odd, but it gets into an issue that a lot of times when you talk about the constitution, people will think of it as this set of rules that are just there and we follow. But when you're getting to the idea of what sort of power does Congress have, what sort of power does the President have? Well yeah, they have the institutional powers outlined in the constitution, but those powers are sort of ultimately constrained by voters. So if Senators don't think they're going to get thrown out of office if they use one definition as opposed to another, right, David Mayhew, a political scientist, will tell us Congress does what will get them re-elected. So, if they think they're not going to get re-elected if they make one definition of what's impeachable then or the other, then they will take the one that gets them re-elected. And so a lot of Republican senators are thinking well, I'll have a primary, I'll lose, I'll get voted out of office if I go against President Trump. Some of them are not thinking that. The reason I pointed that out is because we have these three impeachments in history. And I don’t want to jump the gun here, every time it comes up no matter what has been done, and I think you know this incitement of a riot, the charges, is pretty serious, actually attacking Congress itself. Senators have never been willing to remove a President, you could say they would have been willing to remove Nixon if he would have fought it. Well maybe Richard Nixon would replay this in his head if he thought again, right? Because James Madison put a constitutional check in the constitution. And you might ask yourself, wait, if Senators are dependant upon on Presidents for their support from parties, are they ever going to remove a President? How many Senators from a party are really ever going to convict? I just don’t know if we are ever going to get to 67, no matter what happens. In that sense, James Madison might have screwed up here, if you're trying to check a President. The lesson from this might be, whatever the party, Senators cannot go against their president in those kinds of numbers. You might get a few, but you won't get enough to remove. So in that sense, you know Madison says we put this check in we're going to have ambition vs. ambition. Right, govern must be able to control itself and maybe it can't. Maybe that doesn't work it's not a check. It sits there as a nice little check that we say when they teach Intro to U.S. Government, bit is it realistically going to happen.

Dr. Slocum:

Well, piggybacking on this, it did come very very close to happening with the first impeachment. Prior to Trump, two previous presidents had been actually impeached. Those being Andrew Johnson in 1868 and Bill Clinton in 1999. Richard Nixon was not actually impeached, because the house at the time he decided to resign on August 8th, 1974, was when he announced his resignation. At that time the house Judiciary Committee had voted out in favor of Articles of impeachment and the next step in the house was to have a floor vote on impeachment among all the members of the house. That did not take place because Nixon decided to resign thereby short circuiting the process, so Richard Nixon was not actually a president who was impeached. Andrew Johnson and Bill Clinton however were impeached with a full vote in the House of Representatives. Andrew Johnson was impeached in 1868 for violating a law passed by Congress stipulating that the president could not fire some of his top appointees without Congressional approval and Johnson nonetheless dismissed his Secretary of War, Edwin Stanton without Congressional approval and was impeached for it and that matter moved into the Senate and Johnson came within one vote of being convicted and removed. However he's survived, but he came within one vote so it was very very close.

Dr. Parsneau:

Right, and I did to some degree conflate impeachment with removal, but yeah removal is tough. I still think Richard Nixon would want a rerun if you really thought this through.

Dr. Nelson:

Before we talk about Bill Clinton, just to kind of clarify, so the house votes on impeaching and the Senate votes on the conviction or removal or not. So technically when we talk about Trump, he has been impeached by the house twice, but never actually removed based on Senate votes. Our listeners may not understand there's a difference between being impeached and being removed.

Dr. Slocum:

Impeachment is an act of accusing the President of wrongdoing or misuse or abuse of power. And that is conducted by the House of Representatives only and assuming a successful vote to impeach then the matter moves to a trial in the Senate. The outcome of that is the President is either convicted or acquitted although again let me emphasize this is not a legal process it is a political process and it is separate from any legal action that might befall the President. Whatever the outcome of the trial in the Senate the president is not shielded from action in the justice system for his behavior. If he is judged to have committed crimes he can be investigated, he can be prosecuted and disciplined or punished for that, although the justice department does have guidance on hand that says that a sitting president cannot be prosecuted. And I think Trump has tried to fight, to argue in court if I remember correctly that a sitting president cannot even be investigated, but the courts have swatted that notion down.

Dr. Nelson:

But they can still be investigated after they're removed or they're out of office based on the [inaudible].

Dr. Slocum:

Yes, then they are subject to the action of the legal system, prosecution and trial punishment

possibilities after that president is out of office.

Dr. Nelson:

All right so I interrupted us so let's bring us to Bill Clinton who was the third president that has been impeached that we're talking about here so give me a little rundown. Second in the timeline to be impeached.

Dr. Slocum:

So that was, this was 1999 and this was the impeachment of Bill Clinton. February of 1999. This flowed from Bill Clintons affair, sexual affair with a white house intern named Monica Lewinsky and Clinton was accused by the house of having a sexual affair with Ms. Lewinsky and then perjuring himself by lying about it, to cover it up. So he was impeached on a largely party-line vote in February of 1999 and so that matter also moved to a trial in the Senate and the Senate voted 50/50 deadlock on one of the charges, I don't have that right in front of me, I think like something like 50 to 46 or 45 on the other, but at any rate the Senate fell well short of the 67 votes needed to convict on both charges, but Clinton remained in office for the remainder of his second term.

Dr. Nelson:

And just to be clear he got impeached not just because, not because of his sexual affair, it was his lying to Congress that got him impeached, the perjury. Because technically having sex with another consenting adult is not illegal or a high crime, but the perjury is definitely something that is a high-crime.

Dr. Slocum:

Well, it was a matter of Congress’ judgement, the impeachment of Clinton was pushed by Republican leaders, who were in the majority in both the house and the Senate and I think it was a political move in part to please the religious right which was you know, very desirous of impeaching in Clinton.

Dr. Nelson:

Lets talk, you get impeached by the house, what would happen if a President actually got convicted by the Senate and we know there's kind of two scenarios they are currently a sitting President or in the case of the second impeachment, Trump, their term has ended what could happen with that?

Dr. Parsneau:

They would they would be removed from office because they were convicted and then the Senate would vote on what exactly the punishment is. The additional punishment besides being removed is the constitution says you can be prevented from holding public office in the future so once they impeach then they remove him from office and then they decide can you ever hold public office again and we've never gotten to that point it's a question of whether you need 67 place that in, is it 67 or ⅔ votes to put that on a convicted president or not or it might just take a majority. But anyway that is a possibility to prevent them from holding office again, if they're convicted. Which I think was one of the things, that was the punishment, that the house impeachment managers were going for that's what Raskin essentially wanted to prevent him from running for office again too and yet answer interesting line in response to that Republicans said well you're just afraid hell run again, you’re just doing this to prevent him from running again. And you’re afraid that he’ll win and no I’m not afraid that he’ll win, I am afraid that he’ll lose again, because we have seen what he does when he loses. So, that’s a possibility.

Dr. Nelson:

So what is this impact, what is the impact of the impeachment at the house and the lack of conviction at the Senate, what does that do for each political party, I'm going to ask you about long-term effects on the nation at the end, but what does this do for each political party right now? Does it boost ability to get people elected or not? What do you see?

Dr. Slocum:

That’s a tough one and I don't feel like I can answer that with a, with a great degree of [inaudible]. I think for the Democrats you know who led the impeachment on both occasions of Trump. I think the feeling among Democrats is that there are certain lines that Trump's Behavior has crossed and that we as a party cannot simply stand idly by and accept his behavior as normal or acceptable and so I think it was a drawing a Line in the Sand in terms of what is allowable and what is not allowable of presidential conduct.

Dr. Parsneau:

I think another aspect of this if you think about the house on the, on the one hand you have people in the house and the system is designed that ultimately have to find compromise between the two parties right. The house can push majority thing through, but the end of the day you want to see a lot of bills that get the vass number of everybody voting for them cuz they're good for the country right? So the Covid relief bill, very popular for the country, whether or not you think it's good, it's very popular, it doesn’t get any Republican votes. I think this may have happened, regardless if there was an impeachment trial or not, but I think the impeachment trial is one more thing that increases polarization. You can imagine if you're in the house and there like, you voted not to convict someone who sent people here to kill Nancy Pelosi and Mike Pence right. If that's your feeling how do you sit in a conference with that person again or on the other hand, how do you sit in a conference with someone who you think, well you're just being a dilatant and you're just charging everybody to impeach everybody that’s a republican. But it's another thing that just makes it almost impossible to do Congress’ business and I see something like this and something that you always bullet point in Intro to U.S. Government is the Senate is collegial, all those Senators are buddies. And at the end of a day, they got to work together, doesn't matter what the party is. I don't think that's the case anymore and I am close to talking that line out of the powerpoint. Because, how does a senator sit and go, I totally disagree with you on this issue, I mean I guess you could take it from your side, but if you're Democrat how do you sit across from Ted Cruz and not point I mean and not point out you were standing here and voting to overturn the election. Or calling for that and that caused people to come here, that's part of it. I don't, this is just a huge issue, a disagreement that anybody who is in the Senate right now is going to be able to let this go. I think it gets the parties more closely aligned. Were seeing this one cabinet nominations, cabinet nominations are usually a 95 person vote one way or the other and now we're going to getting these cabinet nominations that are 60 or 55 57, right a couple of Republicans come over to confirm cabinet nominees.That would have been an extreme, rare, cabinet nominee back in the 80s and the 70s, even the 90s and nowadays coming right down party lines. The director of OMB, well she can’t be that because she tweeted some mean things. It all stands on whether Joe Manchin will vote. Sorry, I am getting into the details of this. That should not be a 50/50 vote. That the President gets to choose the OMB director. Unless they pick someone who is really controversial, that usually just flies right through. That’s what I think the senate is now, there's not that collegiality.

Dr. Slocum:

I agree with Dr. Parsneau’s assessment, the, you know even cabinet nominations now are becoming a venue for part of some conflict and you're having almost lockstep Republican opposition to virtually anyone or everyone Joe Biden appoints and it's pretty unprecedented.

Dr. Nelson:

So I want to bring up another thing that I think is unprecedented being somebody who's outside of political sciences. What about the Republicans that got censored for voting in favor of impeachment, what are your thoughts on that, where the local state parties are censoring Republicans in the house that voted for impeachment?

Dr. Slocum:

Yeah, so the Arizona State Party is, I think it I don't think this is something that would happen within the Democratic party because the basic difference between the parties is at the Republican party is an authoritarian party and I think there's a reasonable argument to be made that maybe an authority cult. Might even be that's potentially debatable though, but the Republicans are an authoritarian party and the Democrats are non-authoritarian party. And they're censoring actions by state parties against Republican Congress members who vote in favor of impeachment is an indication of of the degree to which lock-step conformity is demanded by Republicans. I don't think we would see this among Democrats because I don't think Democrats are authoritarian as a party the same way Republicans are. There is a basic asymmetry here that is almost impossible to ignore.

Dr. Parsneau:

I think another another side of this is that it it continues what is basically a misalignment between the agenda of the Republican base with the Republican office holders. Not to say that a lot of the office holders aren't lining up with what Donald Trump wants, or wanted, but if we go back to 2016, the majority of the office holders and people in charge of the Republican party at at high levels were never, Trump, we don't want this guy taking over the party, he’s just a celebrity, he’s crazy. But the base clearly wanted him, because they kept voting for him in the primaries and caucuses. Then he got office and as the four years have gone by its presidentialized political parties. The longer he was there the more he drew attention the more Republicans getting elected, getting re-elected depended upon him. Even at this point he's out of office, but the base is still holding to him. Super high, like 80% approval among Republicans. And if your Republican Senator, office holder, Governor, whatever, even if you disagree with Trump or what Trump wants, how do you go against that cuz if you lose your base support, well you can appeal to moderates, well moderates are going to maybe go for you and maybe go for the Democrat and no matter how much you criticize Trump you're not going to get very many Democratic votes so for a Republican elected official, they're really closely tied to Trump so why I guess your question about the censoring is the Democratic or the Republican party base is telling its leaders we are still with Trump, don't cross Trump and his agenda, because we are still with him. And that's where you're getting that that's how they send a signal, I mean political state parties, activists, they send signals by passing these sorts of things, saying these sorts of things, putting language in there state party platform. And 9 times out of 10 it lines up with what the elected officials want. But this is their way of saying you're not doing what we want. We can find somebody else to be in our Republican Governorship or Republican Senate seat. And as someone who has been to a lot of state party conventions, the people who go to those conventions, the people vote for that stuff, they’re there year in and year out. They'll sit through 5000 hours of boring meetings to push one thing and so they didn't just fickily decide that they didn't like whatever I guess Cindy McCain, one of the people that got censored, I know she doesn't hold office, but thats wow, you just censored the widow of John McCain. And they are not fickle, this is what they want, this is their only way to send that message so that's what they did.

Dr. Nelson:

Yeah Chaney got censored as well, I think she is Wyoming, Liz Chaney of Wyoming.

Dr. Parsneau:

I wish I could go back in a time machine and have it be like 2006 and just ask people, what do you, what do you think about Chaney getting censored by the Republican party for not supporting Trump enough?

Dr. Nelson:

All right so I want to bring us back to closing thoughts on impeachment. So what are your closing thoughts, what do you think are the long-term effects of what has happened? I mean we just had a president that was impeached twice while he was President, not convicted either time but still impeached twice. So what do you think the long-term effects are maybe on everything in general, politics, just our country, let's wrap those up and we'll start with you Dr. Parsneau.

Dr. Parsneau:

I think there's a couple of things as I already mentioned I think this is just going to drive polarization, division among the parties and I don;t see an end to it. I’m not going to say it can’t end, it will end at some point in time presumably, but it's just going to further that division between the two parties whether it’s you know you guys wanted to impeach Trump from the minute he took office to you were willing to let this guy send a violent mob at the capital. I don't know how you bridge that divide. I think that's one thing I think another thing is that you got to ask is this the path that the GOP is going to go on for the next 10 years I mean people are still pushing Trumpian claims of election fraud. There still, Josh Hawley was just at CPAC and you know, actually sounds like he was cheering the rioters, sort of taking credit for the peaceful part of it. So that's another thing is this going to be something that they sort of the Republican party embraces or they going to reject it at some point. And then the third longer-term effect I can think of is what Presidents in the future are going to fear impeachment and conviction. I know people are saying well Trumps the only President that has been impeached twice. Don't bet the next President won't get impeached twice, like if it just takes a house majority to impeach somebody, you can impeach him for anything and Presidents might do things that they like I don't care if I get impeached they'll never remove me. They wouldn’t remove Trump, they didn’t remove Clinton, they didn’t remove Johnson. You can do anything with executive power and your own party is going to stick with you cuz they know that rely on you and if you got the backing of the base, you know it's sorry James Madison, but you know men are no angels and we're going to get a President that's definitely no angel and he’s going to know that he can't be held in check by this. I hope that's not the case, but I worry about future Presidents who aren't even thinking about it.

Dr. Slocum:

I think Donald Trump was unique among Presidents hopefully will be unique among future presidents as well as his degree of shamelessness. Trump above and beyond any previous President regardless of party, views himself as rightfully a dictator and that he can get away with and do anything that you want and the outcome of the two impeachments you know I think, just gives him further mental ammunition in that direction. Trump views himself as above the law about constraints by you know by anyone or anything and you know the result was it was predictable and I agree with Dr. Parsneau’s assessment that an unintended and probably undesirable consequence of impeachment is to drive an increase in partisan polarization, but on the other hand you know I think on the Democrats hand they had to, they probably were aware of that risk and decided that for the interest of the country it was necessary to, as best as possible, send Donald Trump a message; you can't get away with just anything and you can't get away with extorting the leadership of Ukraine into launching an investigation of your main political parties son and you can't foment and get away with it. And you can't foment a riot and tell people to fight like hell at the Capitol and with the result being a large group of people storm the capital looking to kill house Speaker Nancy Pelosi, looking even to kill your own vice president Mike Pence and get away with it. So I think that's the message the Democrats were trying to send.

Dr. Nelson:

I would agree with that because that message is not just for people in the United States that message is for the whole world right, that we're not just going to let him get away with that was part of the impeachment.

Dr. Slocum:

The President is not a King.

Dr. Parsneau:

To some degree that punishment requires supposedly that the person being punished cares. Like oh youve been impeached twice, I don’t care, I’m still in office. It kind of reminds me of that winlinee from the movie “A Christmas Story” where the kids are going to be punished and the teacher says well all of you know what you did wrong and then make the kids, Ralphie says every kid knows that's the punishment you really want, you're going to know that you did wrong feel bad, cuz that's no punishment at all. I don’t suspect he loses sleep over, I'm going to look bad to history and you know we can think of a lot of figures in history that don’t seem to mind that.

Dr. Slocum:

Yeah I think your assessment is correct Dr. Parsneau. You know the ability of this process to constrain Presidential behavior assumes that the President in question cares and I think it's abundantly clear that Donald Trump doesn't care in fact, he couldn’t care less. And so in terms of sheer shamelessness, Donald Trump really goes beyond any President in history.

Dr. Parsneau:

Yeah it's really going to count on is there anything that like what are the effects on the people who voted one way or the other are are Democrats going to lose office because they voted, they did one thing or they voted to convict him or they impeached him. Is that going to look bad like what happened to the Republicans in the 90s when they, they voted to impeach Bill Clinton. Or are the Republicans who voted not to convict or not to impeach are they going to suffer any consequences? That might be the ultimate lesson that politicians will learn, oh it doesn’t matter how I feel, eventually the voters will get around to issuing their verdict next time I am up for election.

Dr. Nelson:

So the midterm 2022 elections is going to be a barometer of this.

Dr. Slocum:

That’s what I was going to say, the Republicans, like if you look at the Senators, the Republican Senators who voted to convict all lot of them are like Mitt Romney, they’ve already fought with Trump or they're going to retire.

Dr. Parsneau:

Richard Buhr of North Carolina I think was one of them. He is stepping down, he is not running for re-election. There is speculation that Lara Trump might seek that Senate seat in North Carolina.

Dr. Slocum:

But I’ll give the Republican house members who are up in two years, they don’t have 6 yars like Susan Collins before their going to be up again right. Their going to be up in two years and they just probably angered a bunch of their supporters. I’m not going to say their not calculating, well this will get me re-elected because maybe they are counting on the moderates to save them, but there are consequences of that from their party base. But they know they are up in two years and they know that people are still going to be talking about that. They are talking about it know, there are fundraisers, what are fundraisers going to say. So give them some credit that they went against their party base on this.

Dr. Nelson:

Well thank you both, I love talking with you, I always learn so much and I just learned a lot more about impeachment. I know that hopefully the future will be able to talk about the next round of elections and kind of some changes are going on there too so, thank you.

Dr. Parsneau:

Thank you for having me

Dr. Nelson:

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