

Oaths

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Research References

- 1 Hinds §§ 6–22
- 6 Cannon §§ 127–185
- 1 Deschler Ch 2 §§ 5, 6
- Manual §§ 197–206
- U.S. Const. art. I § 5, art. VI clause 3

§ 1. In General; Administering the Oath

Generally

The Constitution requires that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. U.S. Const. art. VI clause 3. The form of the oath and the procedure for its administration is regulated by statute. 2 USC § 25. Form of oath, see 5 USC § 3331 and *Manual* § 197.

Until a Member-elect has subscribed to the oath, he does not enjoy all the rights and prerogatives of a Member of Congress. Deschler Ch 2 § 2.1. Members who have not taken the oath are not entitled to vote (8 Cannon § 3122) or introduce bills (*Manual* § 300). However, unsworn Members have participated at the beginning of a session in organizational business, such as the election of the Speaker. 1 Hinds § 224. Although a Member has been named to a committee before taking the oath (4 Hinds § 4483) under the modern practice the election of such a Member to a standing committee may be made effective only upon being sworn. See H. Res. 26, H. Res. 27, Jan. 6, 1983.

In the early practice of the House, it was the custom to administer the oath by state delegations. Beginning with the 71st Congress, however, Members-elect have been sworn in *en masse*. 6 Cannon § 8. Under this practice, the Speaker, on opening day, administers the oath of office to all Members-elect at one time, although a Member-elect whose right to take the oath has been challenged may be asked to stand aside. 93–1, Jan. 3, 1973, p 15; 94–1, Jan. 14, 1975, p 19. A Member-elect who does not take the oath of office on opening day may appear in the well, in response to the Speaker's invita-

tion, and take the oath. 92-1, Jan. 25, 1971, p 229; 92-1, Feb. 1, 1971, p 1257. Included among those to whom the Speaker administers the oath are Delegates-elect and the Resident Commissioner from Puerto Rico (93-1, Jan. 3, 1973, p 15), and Members-elect elected to fill vacancies (92-2, Apr. 10, 1972, p 11865; 96-1, Apr. 9, 1979, pp 7744, 7745).

Credentials as Basis for Taking Oath

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize the administration of the oath to Members-elect who appear without appropriate formal credentials. 1 Hinds §§ 162-168, 553-564. For example, a Member-elect may be sworn on the basis of letters or telegrams from the executive department of the state of representation, attesting as to his due election. See Deschler Ch 2 §§ 3.1-3.4. And the House may authorize the administration of the oath where credentials have not yet arrived, pursuant to a statement by another Member-elect or a state official that the election in issue is neither contested nor questioned. Deschler Ch 2 § 3. Such authorization is provided by unanimous consent. 86-2, Mar. 11, 1960, p 5294; 92-2, Apr. 11, 1972, p 12172; 95-2, Feb. 21, 1978, p 3853. Unofficial state communications declaring the results of the election may be laid before the House before the unanimous-consent request for the administration of the oath. 97-2, July 15, 1982, p 16332.

Authorization by Resolution

The administration of the oath may be authorized by resolution after a challenge to the right to be sworn has been made. Such resolutions have included provisions collateral to the actual administration of the oath, such as a condition that the final right to the seat be referred to a committee. Deschler Ch 2 § 5.

Failure or Refusal to Take the Oath

Members-elect entitled to take the oath may decline it by resigning before taking a seat (2 Hinds §§ 1230-1234), since membership cannot be imposed on one without his consent. A Member-elect may be permitted to defer his taking of the oath, without declining his seat, until such time as questions regarding his qualifications are resolved. Deschler Ch 2 § 5. But where a Member-elect fails to appear to take the oath, the House may by resolution provide that if he fails to appear to take the oath by a certain date, the seat will be declared vacant. 90-1, Mar. 1, 1967, p 4997.

Precedence

The administration of the oath is a matter of high privilege. The oath may be administered before the reading of the Journal (1 Hinds § 172), and takes precedence of a motion to amend the Journal (1 Hinds § 171). It has been held in order to administer the oath during a roll call (97–1, Jan. 22, 1981, p 693), in the absence of a quorum (1 Hinds § 174), or on Calendar Wednesday (6 Cannon § 22). The administration of the oath is in order even after the previous question has been ordered on a pending matter. 91–1, Oct. 3, 1969, p 28487; 97–1, Jan. 5, 1981, p 103. And debate on a resolution reported from the Committee on Rules may be interrupted to allow a new Member to take the oath of office. 88–1, Dec. 24, 1963, p 25526.

§ 2. Absent Members and the Oath; Use of Deputies

The Speaker, or a deputy named by him, may be authorized by resolution to administer the oath of office to a Member-elect absent because of his illness (92–1, Jan. 22, 1971, p 144; 93–1, Jan. 3, 1973, p 28; 94–1, Jan. 14, 1975, p 33), or because of some illness in his family (98–1, Jan. 3, 1983, pp 51, 52). The resolution may authorize the administration of the oath at some location other than the House. 1 Hinds § 170; 6 Cannon § 14. Persons who may be designated by the Speaker to administer the oath to an absent Member-elect include another Member (87–1, Jan. 3, 1961, p 26), a state or county judge (92–1, Jan. 22, 1971, p 144; 93–1, Jan. 3, 1973, p 28), or a federal district court judge (97–1, Jan. 5, 1981, p 114). The deputy so designated reports thereon to the House (92–1, Jan. 22, 1971, p 145; 96–1, Jan. 24, 1979, p 976), which report may take the form of a letter from the deputy designated by the Speaker (86–1, Jan. 12, 1959, p 559).

§ 3. Challenging the Right To Be Sworn

Generally

Any Member-elect may challenge the right of any other Member-elect to be sworn when the Speaker directs the membership-elect to rise to take the oath of office. Deschler Ch 2 § 6. The fact that the challenging party has not himself been sworn is no bar to his right to invoke this procedure. 1 Hinds § 141. He must base his challenge either on his own responsibility as a Member-elect or on specified facts or documents. Deschler Ch 2 § 6.2. Such challenges are generally directed at a single Member-elect, but in several instances the challenge has been directed against an entire state delegation. 1 Hinds §§ 457, 460–462; Deschler Ch 2 § 6.4. The authority to challenge the right of a Member-elect to be sworn is based on the U.S. Constitu-

tion, which designates the House as the sole judge of the elections, returns, and qualifications of Members. U.S. Const. art. I § 5 clause 1. Generally, see ELECTION OF MEMBERS.

Procedure

When a challenge is proposed, the Speaker asks the challenged Member not to rise to take the oath *en masse* with the rest of the membership. The House and not the Speaker determines the action to be taken in such cases. Deschler Ch 2 § 6.1; *Manual* § 199. Debate on the right of the Member-elect to be sworn is not in order until after the remaining Members have been sworn. Deschler Ch 2 § 6.3. The pendency of a challenge does not preclude the entertainment of other business before the House, and all other organizational business may be completed before a challenge is resolved. 1 Hinds § 474; Deschler Ch 2 § 6.

Several courses of action are open to the House in disposing of a challenge. First, the House may simply seat a Member by authorizing the administration of the oath pursuant to a resolution determining the right to the seat. Deschler Ch 2 § 6.5. Second, the House may by resolution authorize the administration of the oath based on the Member-elect's *prima facie* right to the seat, but at the same time refer the determination of his final right to committee. 1 Hinds §§ 528–534. Finally, the House may by resolution refer the *prima facie* as well as the final right to the seat to committee, without authorizing the administration of the oath. Deschler Ch 2 §§ 6.6, 6.7.

Resolutions relating to the right of a challenged Member-elect to be sworn are privileged. 90–1, Mar. 1, 1967, p 4997. The resolution is open to amendment where the House has not ordered the previous question thereon. 91–1, Jan. 3, 1969, pp 15, 22–25. The challenged Member-elect may, by unanimous consent, be permitted to participate in debate on the resolution. 90–1, Jan. 10, 1967, pp 15, 23. The time for debate on the resolution may be extended by unanimous consent. 90–1, Mar. 1, 1967, p 4997.

As to the procedure to be followed in contested elections, see ELECTION CONTESTS AND DISPUTES.

§ 4. Oaths Relating to Classified Information

In 1995, a new provision was added to the Code of Official Conduct—Rule XLIII of the House rules. The new provision, clause 13, prescribes an oath to be executed by all Members, officers and employees of the House before obtaining access to classified information:

I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Rep-

representatives, except as authorized by [the] House of Representatives or in accordance with its rules. *Manual* § 939.

The Committee on Standards of Official Conduct has interpreted this clause as applying to classified information provided by “any person,” not merely to data furnished by the House or by the executive branch. *Memorandum For All Members, Officers and Employees*, July 12, 1995.