

Chapter 33

Oaths

- § 1. In General; Administering the Oath of Office
- § 2. Absent Members and the Oath; Use of Deputies
- § 3. Challenging the Right To Be Sworn
- § 4. Oath Relating to Classified Information

Research References

- U.S. Const. art. I, § 5; art. VI, cl. 3
- 1 Hinds §§ 6-22
- Deschler Ch 2 §§ 5, 6
- Precedents (Wickham) Ch 1 § 4.1; Precedents (Wickham) Ch 2 §§ 2.3, 3.20, 3.21; Precedents (Wickham) Ch 5 § 18.21; Precedents (Smith) Ch 7 §§ 4.3, 6.8
- Manual* §§ 197-206

§ 1. In General; Administering the Oath of Office

Generally

The Constitution requires that every Senator and every Representative swear or affirm to support the Constitution of the United States. U.S. Const. art. VI, cl. 3. Clause 1 of rule II carries the same requirement for elected officers. For administration of the oath to officers, see OFFICERS AND OFFICES. The form of the oath and the procedure for its administration are regulated by statute. 2 USC § 25. For the form of the oath, see 5 USC § 3331 and *Manual* § 197.

Until a Member-elect has subscribed to the oath, such individual 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 or to introduce bills. *Manual* § 300; 8 Cannon § 3122. However, unsworn Members have participated at the beginning of a session in organizational business, such as the election of the Speaker. 1 Hinds § 224. Where two unsworn Members participated in more than mere organizational business, the House later ratified (by simple resolution) certain actions after the administration of the oath to Members-elect *en masse*. Precedents (Wickham) Ch 5 § 18.21. Although a Member has been named to a committee before taking the oath, under the modern practice the election of such a Member to a standing committee may be made effective only upon being sworn. 4 Hinds § 4483; see, *e.g.*, 114-1, H. Res. 7, Jan. 6, 2015, p 56.

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 administers the oath of office to all Members-elect at one time on opening day, although a Member-elect whose right to take the oath has been challenged may be asked to stand aside. *Manual* § 203. During a recent public health emergency, the Speaker requested Members-elect to take the oath in small, pre-arranged groups, consistent with guidance from the Attending Physician. 117-1, Jan. 3, 2021, p _____. A Member-elect who does not take the oath of office on opening day may appear later in the well, in response to the Speaker's invitation, and take the oath. Deschler Ch 2 § 5.14. The Speaker also administers the oath to Delegates-elect, the Resident Commissioner-elect from Puerto Rico, and Members-elect who fill vacancies by special election. Deschler Ch 2 §§ 3.6, 5.

Credentials as Basis for Taking the Oath

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize, by unanimous consent, the administration of the oath to Members-elect who appear without appropriate formal credentials. 1 Hinds §§ 162-168, 553-564; Deschler Ch 2 § 3.5. For example, a Member-elect may be sworn on the basis of letters or faxes from the executive department of the state of representation, attesting to the results of the election. Deschler Ch 2 §§ 3.1-3.4. The House may authorize the administration of the oath (usually by unanimous consent) 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. Unofficial state communications, including faxes and electronic scans, declaring the results of the election may be laid before the House before the unanimous-consent request for the administration of the oath. Deschler Ch 2 § 3.4.

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 the Committee on House Administration. Deschler Ch 2 § 5. In one instance, where a Member-elect's credentials were in proper form but questions arose regarding her continued service as an elected municipal official, the House resolved the issue by adopting a privileged resolution authorizing the administration of the oath. Precedents (Smith) Ch 7 § 4.3.

Failure or Refusal to Take the Oath

Members-elect entitled to take the oath may decline it by resigning before taking a seat, because membership cannot be imposed on one without one's consent. 2 Hinds §§ 1230-1234. A Member-elect may be permitted to defer taking the oath, without declining the seat, until such time as questions regarding the requisite qualifications are resolved. Deschler Ch 2 § 5. However, where a Member-elect fails to appear to take the oath, the House may provide by resolution that, if such Member-elect fails to appear to take the oath by a certain date, the seat will be declared vacant. Deschler Ch 2 § 5.7.

In the 97th Congress, the House, by majority vote, declared vacant a seat where the Member-elect was unable to take the oath because of an incapacitating illness. Precedents (Smith) Ch 7 § 6.8. In that case, the medical prognosis showed no likelihood of improvement. The constitutional basis for the declaration of the vacancy by majority vote was not expressly stated in the resolution. Nevertheless, the power of the House under article I, section 5 of the Constitution to judge the qualifications of its Members by majority vote has been justified by the Supreme Court. In *Powell v. McCormack*, 395 U.S. 486, 520 (1969), the Court stated in a footnote that in addition to age, citizenship, and inhabitancy, the article VI requirement for taking the oath could be argued to be a qualification.

Precedence

The administration of the oath is a matter of high privilege. *Manual* § 201. The oath may be administered before the reading of the Journal and takes precedence of a motion to amend the Journal. 1 Hinds § 171. It has been held in order to administer the oath in the absence of a quorum, during a roll call, during separate House proceedings of a joint session to count electoral votes, and on Calendar Wednesday. *Manual* §§ 200, 201; 1 Hinds § 174; 6 Cannon § 22; Precedents (Wickham) Ch 2 §§ 3.20-3.22. The administration of the oath is in order even after the previous question has been ordered on a pending matter. Deschler Ch 2 § 5.17. Debate on a resolution reported from the Committee on Rules may be interrupted to allow a new Member to take the oath of office. Deschler Ch 2 § 5.18.

The Act of June 1, 1789, provides that on the organization of the House, and previous to entering on any other business, the oath shall be administered by any Member-elect (by tradition the Member-elect with longest continuous service) to the Speaker and by the Speaker to the other Members and Clerk (when elected). *Manual* § 198; 2 USC § 25; 1 Hinds §§ 130, 131; 6 Cannon § 6. The Act was cited by the Clerk in recognizing for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election

of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party. *Manual* § 198; Precedents (Wickham) Ch 1 § 4.1.

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

The Speaker, or a deputy named by the Speaker, may be authorized by resolution to administer the oath of office to a Member-elect absent because of illness or because of some illness in the family. Deschler Ch 2 §§ 5.8-5.12. 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 (Deschler Ch 2 § 5.10), a state or county judge (Deschler Ch 2 § 5.11), or a Federal district court judge (114-1, Jan. 7, 2015, p 187). The deputy so designated reports thereon to the House, which report may take the form of a letter. Deschler Ch 2 §§ 5.8, 5.10, 5.12.

§ 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 Members-elect to take the oath of office. *Manual* § 202; Deschler Ch 2 § 6. The fact that the challenging party has not been sworn is no bar to such individual's right to invoke this procedure. 1 Hinds § 141. Challenging parties must base the challenge either on their 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, or even multiple state delegations. 1 Hinds §§ 457, 460-462; Deschler Ch 2 § 6.4; 117-1, Jan. 3, 2021, p _____. The authority to challenge the right of a Member-elect to be sworn is based on the Constitution, which designates the House as the sole judge of the elections, returns, and qualifications of Members. U.S. Const. art. I, § 5, cl. 1. See generally ELECTION OF MEMBERS. See also *Manual* §§ 202, 203.

Procedure

When a challenge is proposed, the Speaker asks the challenged Member not to take the oath with the rest of the membership *en masse*. The House, and not the Speaker, determines the action to be taken in such cases. *Manual* § 199; Deschler Ch 2 § 6.1. 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 the 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. *Manual* § 201. The resolution is open to amendment where the House has not ordered the previous question thereon. Deschler Ch 23 § 22.4. The challenged Member-elect may, by unanimous consent, be permitted to participate in debate on the resolution. Deschler Ch 2 § 2.5. The time for debate on the resolution may be extended by unanimous consent. Deschler-Brown Ch 29 § 26.33. Where a challenge is made to the seating of entire state delegations, the House may adopt a resolution authorizing the administration of the oath to all Members-elect (thereby rejecting the challenge). 117-1, Jan. 3, 2021, p ____.

The seating of a Member-elect does not prejudice a contest pending under the Federal Contested Elections Act over final right to the seat. 2 USC §§ 381-396; *Manual* § 203; Precedents (Wickham) Ch 2 § 2.3. In response to parliamentary inquiries, the Chair informed the House that a notice of contest had been filed with the Clerk. 105-1, Jan. 7, 1997, p 120; 110-1, Jan. 4, 2007, p 5.

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

§ 4. Oath Relating to Classified Information

Clause 13 of rule XXIII, the Code of Official Conduct, prescribes an oath to be executed by all Members, officers, and employees of the House before they obtain 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 Representatives, except as authorized by the House of Representatives or in accordance with its rules. *Manual* § 1095.

The Committee on Ethics 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*, October 12, 2001.

The signatories to this oath are a matter of public record, and copies of the executed oath are maintained by the Sergeant-at-Arms (such responsibility having been transferred from the Clerk in the 113th Congress). *Manual* § 1095.