

## CHAPTER 2

# *Oaths*

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## *Oaths*

### **§ 1. In General; Status of Members–elect and Delegates–elect**

When the House of Representatives first convenes at the beginning of a new Congress, the membership initially consists only of Members–elect, and the House must take all necessary steps to make such individuals full legal Members of the House, with all attendant rights and privileges. This process consists of four basic steps: (1) the presentation of individual credentials; (2) the preparation of the Clerk’s roll; (3) the administration of the oath of office to qualified Members–elect; and (4) the resolution of any challenges to the right to be sworn. Only after the House has proceeded through these stages can it begin to fulfill its constitutional duties as a legislative body.

The oath of office is required by article VI, clause 3, of the Constitution.<sup>(1)</sup> The form of the oath is prescribed by statute as follows: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”<sup>(2)</sup>

The form of the oath dates from the First Congress in 1789 and was revised most recently in 1966.<sup>(3)</sup> The procedures for swearing in Members–elect are thus derived from a combination of constitutional and statutory requirements as well as traditions and customs of the House that have evolved over time. Because the oath of office is administered to Members–elect prior to the adoption of the standing rules of the House,<sup>(4)</sup> the procedures surrounding the administration of the oath are governed by general parliamentary law.<sup>(5)</sup>

Between the time an individual is elected to the House and the subsequent swearing in of said individual as a full Member, such person is accorded the status of Member–elect. Members–elect share many of the same

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1. *House Rules and Manual* § 196 (2017).

2. 5 U.S.C. § 3331.

3. P.L. 89–554, 80 Stat. 378.

4. See Deschler’s Precedents Ch. 1 and Precedents (Wickham) Ch. 1.

5. For more on general parliamentary law, see Deschler’s Precedents Ch. 1 §§ 8, 9; and Precedents (Wickham) Chs. 1, 5.

rights and privileges of full Members, with certain exceptions.<sup>(6)</sup> In order to organize the House, Members–elect participate in various proceedings prior to being sworn. Constitutional provisions provide the basis for three authorities exercised by Members–elect. First, Members–elect participate in the initial quorum call (by states) at the convening of a new Congress.<sup>(7)</sup> Second, Members–elect are entitled to vote for Speaker of the House.<sup>(8)</sup> Finally, Members–elect may demand the yeas and nays on questions presented to the body prior to the adoption of standing rules.<sup>(9)</sup> All three of these powers may be exercised by Members–elect prior to being sworn. However, a Member–elect must present appropriate credentials to the Clerk of the House for such Member–elect to be included on the Clerk’s roll<sup>(10)</sup> (regardless of whatever challenge may arise regarding a Member–elect’s right to take his or her seat).

Apart from these constitutional authorities, Members–elect possess certain inherent legislative rights without which the House could not complete its organizational business. So, for instance, Members–elect must be permitted to debate propositions, offer resolutions, propose motions, and raise points of order.<sup>(11)</sup> A Member–elect may challenge the right of another Member–elect to be sworn, and Members–elect are permitted to debate a proposition related to their right to a seat.<sup>(12)</sup> Contestants in election cases may also be granted admission to the floor of the House and the right to debate

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6. For parliamentary inquiries on the differences between a Member–elect and a full Member, see Deschler’s Precedents Ch. 2 § 2.1. Thomas Jefferson, in his *Manual of Parliamentary Practice*, described a Member–elect as “to every extent a Member except that he cannot vote until sworn.” *House Rules and Manual* § 300 (2017).
  7. U.S. Const. art. I, § 5, cl. 1; *House Rules and Manual* § 46 (2017). See also Deschler’s Precedents Ch. 1 § 5.1 and Precedents (Wickham) Ch. 1 § 3.
  8. U.S. Const. art. I, § 2, cl. 5; *House Rules and Manual* § 26 (2017). See also Deschler’s Precedents Ch. 1 § 6 and Precedents (Wickham) Ch. 1. For parliamentary inquiries regarding the inability of Delegates–elect to vote for Speaker, see Precedents (Wickham) Ch. 1 § 3.5.
  9. U.S. Const. art. I, § 5, cl. 3; *House Rules and Manual* § 75 (2017). See also Deschler’s Precedents Ch. 1 § 9.2 and Precedents (Wickham) Ch. 1 § 4.
  10. For composing the Clerk’s roll of Members–elect, see § 2, *infra*. The credentials of Delegates and the Resident Commissioner are handled differently (for example, the Resident Commissioner is elected to a four–year term) and are announced by the Clerk separately.
  11. See Deschler’s Precedents Ch. 2 § 2 (footnote 1) (describing the ability to participate in proceedings at organization as “unquestioned” despite an explicit lack of formal rulings on the issue). For more on what motions or other legislative actions may be taken prior to the adoption of rules, see Deschler’s Precedents Ch. 1 §§ 8, 9 and Precedents (Wickham) Ch. 5.
  12. See Deschler’s Precedents Ch. 2 § 2.5.

the issue of the election contest.<sup>(13)</sup> Although Members–elect have been elected to committees of the House in earlier times,<sup>(14)</sup> the modern practice is that only sworn Members may be elected to committees.<sup>(15)</sup> On occasion, a committee election resolution may specify that a certain Member–elect (who has yet to take the oath of office) is to be elected “when sworn.”<sup>(16)</sup>

By statute, Members–elect are entitled to compensation (salary and benefits) prior to being sworn.<sup>(17)</sup> Where a Member–elect has been unable to take the oath of office (due to incapacitating illness), the House has adopted a resolution allowing such individual to be compensated as if sworn.<sup>(18)</sup> Members routinely request leaves of absence from the House,<sup>(19)</sup> but leaves of absence have also been granted to Members–elect.<sup>(20)</sup> Where a Member–elect holds an incompatible office at the beginning of a Congress, such individual may elect to delay taking the oath of office in order to complete the service for that other office, and such individual is entitled to compensation as a Member–elect.<sup>(21)</sup>

**13.** For election contests generally, see Deschler’s Precedents Ch. 9 and Precedents (Wickham) Ch. 9. For exercising floor privileges generally, see Deschler’s Precedents Ch. 4 § 4 and Precedents (Wickham) Ch. 4 § 5.

**14.** 4 Hinds’ Precedents § 4483.

**15.** *House Rules and Manual* § 300 (2017). See also 157 CONG. REC. 227, 112th Cong. 1st Sess. (Jan. 7, 2011).

**16.** See, e.g., § 1.2, *infra*.

**17.** 2 U.S.C. § 5301 provides for compensation beginning with the Member–elect’s term until the beginning of the Congress. 2 U.S.C. § 5302 provides for compensation after the Member–elect has subscribed to the oath of office. Thus, Members–elect who are elected to fill vacancies are entitled to receive compensation from the date of their election (pursuant to 2 U.S.C. § 5304) but cannot receive compensation until sworn under 2 U.S.C. § 5302. See Precedents (Wickham) Ch. 7 for additional information on Members’ compensation.

**18.** See, § 1.6, *infra*.

**19.** 2 U.S.C. § 5306.

**20.** See, e.g., § 1.8, *infra*.

**21.** See § 1.7, *infra*. See Deschler’s Precedents Ch. 7 § 4.6 (describing an early opinion by the Attorney General (14 Op. Att’y Gen. 406 (1874)) proposing that a Member–elect, who is legally able to retain that status in addition to holding another office, may be compensated for both offices simultaneously). When similar circumstances arose in the Senate, the Senator–elect involved chose to waive his congressional salary until sworn. See Deschler’s Precedents Ch. 2 § 2.6.

The salary of a Member of Congress is fixed by statute and therefore cannot be waived without specific statutory authority. See 30 Op. Att’y Gen. 51, 56.; B–159835, Apr. 22, 1975; B–123424, Mar. 7, 1975; B–206396.2, Nov. 15, 1988 (nondecision letter). However, nothing prevents a Member from accepting the salary and then donating part or all of it back to the United States Treasury. GAO APPROPRIATIONS LAW REDBOOK 6–105. See also Precedents (Wickham) Ch. 7 for additional information on Members donating part or all of their compensation.

Pursuant to law,<sup>(22)</sup> the Clerk of the House is required to publish in the House Journal and in the *Congressional Record* a list of all individuals who have taken the oath of office as a Member of the House.<sup>(23)</sup> Such publication provides public evidence that such individuals have duly taken the oath of office in accordance with law.

The Member's oath of office should be distinguished from other types of oaths that Members, officers, or employees of the House may subscribe to in certain circumstances.<sup>(24)</sup> Pursuant to clause 13 of rule XXIII<sup>(25)</sup> (originally adopted in the 104th Congress), Members, officers, and employees must execute an oath of secrecy before being permitted to access classified information. Copies of such oaths are retained by either the Clerk (for Members) or the Sergeant-at-Arms (for officers and employees), and the signatories are made a matter of public record by the Clerk via publication in the *Congressional Record*.<sup>(26)</sup> In addition to weekly publication of new signatories in the *Congressional Record*, the Clerk also retains a cumulative list for public inspection.<sup>(27)</sup> When classified security briefings are conducted in the Chamber (or elsewhere in the Capitol complex), the location is appropriately prepared<sup>(28)</sup> and only Members who have taken the oath pursuant to clause 13 of rule XXIII may attend.<sup>(29)</sup> When the House meets in a secret session,<sup>(30)</sup> an oath of secrecy is subscribed to by essential staff who attend such secret session.<sup>(31)</sup>

This chapter focuses on the procedural steps in establishing individuals as full Members of the House. The reader is encouraged to refer to other chapters of this work for related topics, such as other procedural steps at initial assembly of the House (Chapter 1), elections and election campaigns (Chapter 8), and the procedures involved in resolving election contests (Chapter 9). The rights and privileges of Members generally are discussed more fully in Chapter 7.

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22. 2 U.S.C. § 25.

23. See § 1.1, *infra*.

24. For the oath of office administered to elected officers of the House, see Deschler's Precedents Ch. 6 § 17 and Precedents (Wickham) Ch. 6.

25. *House Rules and Manual* § 1095 (2017). Rule XXIII is the Code of Official Conduct.

26. See § 1.4, *infra*.

27. *House Rules and Manual* § 1095 (2017).

28. See Precedents (Wickham) Ch. 4 § 1.

29. See § 1.5, *infra*.

30. See Deschler's Precedents Ch. 29 § 85 and Precedents (Wickham) Ch. 1.

31. See 154 CONG. REC. 4154, 110th Cong. 2d Sess. (Mar. 13, 2008) and 129 CONG. REC. 19776, 98th Cong. 1st Sess. (July 19, 1983).

***Form of Oath; Evidence of Administration***

**§ 1.1 Pursuant to law,<sup>(32)</sup> the Clerk submits for printing in the House Journal and in the *Congressional Record* the list of Members, Delegates, and the Resident Commissioner who have taken the oath of office required by the Constitution, in the form prescribed by statute.<sup>(33)</sup>**

On September 17, 2015,<sup>(34)</sup> the following notification from the Clerk was printed in the *Congressional Record*:

OATH OF OFFICE—MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Members of the 106th Congress, pursuant to the provisions of 2 U.S.C. 25.

DARIN LAHOOD, Eighteenth District of Illinois

**32.** 2 U.S.C. § 25 reads as follows: “At the first session of Congress after every general election of Representatives, the oath of office shall be administered by any Member of the House of Representatives to the Speaker; and by the Speaker to all the Members and Delegates present, and to the Clerk, previous to entering on any other business; and to the Members and Delegates who afterward appear, previous to their taking their seats. The Clerk of the House of Representatives of the Eightieth and each succeeding Congress shall cause the oath of office to be printed, furnishing two copies to each Member and Delegate who has taken the oath of office in accordance with law, which shall be subscribed in person by the Member or Delegate, who shall thereupon deliver them to the Clerk, one to be filed in the records of the House of Representatives, and the other to be recorded in the Journal of the House and in the *Congressional Record*; and such signed copies, or certified copies thereof, or of either of such records thereof, shall be admissible in evidence in any court of the United States, and shall be held conclusive proof of the fact that the signer duly took the oath of office in accordance with law.”

**33.** 5 U.S.C. § 3331.

**34.** 161 CONG. REC. H6134 [Daily Ed.], 114th Cong. 1st Sess. For similar notifications, see: 145 CONG. REC. 5771–73, 106th Cong. 1st Sess. (Mar. 25, 1999); 161 CONG. REC. H2866 [Daily Ed.], 114th Cong. 1st Sess. (May 12, 2015); and 161 CONG. REC. H3999 [Daily Ed.], 114th Cong. 1st Sess. (June 9, 2015).

*Election to Committees*

**§ 1.2 The House adopted two privileged resolutions offered by the chairs of the Democratic Caucus and the Republican Conference, respectively; (1) electing Members and Delegates to standing committees; (2) electing Members–elect only when sworn;<sup>(35)</sup> and (3) electing some for the first session only.**

On January 6, 1983,<sup>(36)</sup> the following committee election resolutions were agreed to:

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE  
HOUSE

Mr. [Gillis] LONG of Louisiana. Mr. Speaker, as Chairman of the Democratic Caucus and on the authority and by direction of the Democratic Caucus, I send to the desk a privileged resolution (H. Res. 26) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 26

*Resolved*, That the following named Members, Members–elect, Delegates and Resident Commissioner be, and they are hereby, elected (Members–elect effective when sworn) to the following standing committees of the House of Representatives:

Committee on Agriculture: E de la Garza, Texas (chairman); Thomas S. Foley, Washington; Walter B. Jones, North Carolina; Ed Jones, Tennessee; George E. Brown, Jr., . . . Committee on Foreign Affairs: Clement J. Zablocki, Wisconsin (chairman); Dante B. Fascell, Florida; Lee H. Hamilton, Indiana; . . . and Robert Garcia, New York (effective only for the First Session of the 98th Congress).

Committee on Post Office and Civil Service: William D. Ford, Michigan (chairman); Morris K. Udall, Arizona; William (Bill) Clay, Missouri; Patricia Schroeder, Colorado; . . . Ronald V. Dellums, California (effective only for the First Session of the 98th Congress); Thomas A. Daschle, South Dakota (effective only for the First Session of the 98th Congress); Ron de Lugo, Virgin Islands (effective only for the First Session of the 98th Congress); Charles E. Schumer, New York (effective only for the First Session of the 98th Congress); and Douglas H. Bosco, California (effective only for the First Session of the 98th Congress).

Mr. LONG of Louisiana. Mr. Speaker, this is the usual resolution at the beginning of each Congress designating members of the standing committees of the House. Committee assignments contained in the resolution have been approved by the Democratic Caucus.

- 35.** *Parliamentarian’s Note:* Although Members–elect have been elected to standing committees in the past (see, e.g., 4 Hinds’ Precedents §§ 4477, 4483, and Deschler’s Precedents Ch. 2 § 2.2), clause 5(b)(1) of rule X provides that only (sworn) Members who continue their affiliation with a party caucus may serve on standing committees. See *House Rules and Manual* § 760 (2017). As shown here, resolutions electing Members to standing committees may include language conditioning the election of Members–elect on such Members–elect taking the oath of office. For more on electing Members to committees, see Deschler’s Precedents Ch. 17 § 9 and Precedents (Wickham) Ch. 17.
- 36.** 129 CONG. REC. 132–34, 98th Cong. 1st Sess. *House Rules and Manual* § 300 (2017). See also: H. Res. 9, 133 CONG. REC. 20, 100th Cong. 1st Sess. (Jan. 6, 1987); H. Res. 8, 139 CONG. REC. 101, 103d Cong. 1st Sess. (Jan. 5, 1993); and H. Res. 13, 143 CONG. REC. 145, 105th Cong. 1st Sess. (Jan. 7, 1997). For an instance in which a privileged resolution called up by the chair of the Democratic Caucus electing minority Members to standing committees included eight Members–elect who had not yet taken the oath of office, see 161 CONG. REC. H28 [Daily Ed.], 114th Cong. 1st Sess. (Jan. 6, 2015).

I have no requests for time and I move the previous question on the resolution.

The SPEAKER.<sup>(37)</sup> Without objection, the previous question is ordered on the resolution.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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#### ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. [Jack] KEMP [of New York]. Mr. Speaker, by direction of the Republican Conference, I send to the desk a privileged resolution (H. Res. 27) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 27

*Resolved*, That the following named Members and Members-elect be, and they are hereby, elected (Members-elect effective when sworn) to the following standing committees of the House of Representatives:

Committee on Agriculture: Edward R. Madigan, Illinois; James J. Jeffords, Vermont; E. Thomas Coleman, Missouri; Ron Marlenee, Montana; Larry J. Hopkins, Kentucky; George Hansen, Idaho; Arlan Stangeland, Minnesota; Pat Roberts, Kansas; Bill Emerson, Missouri; Joe Skeen, New Mexico; Sid Morrison, Washington; Steve Gunderson, Wisconsin; Cooper Evans, Iowa; Gene Chappie, California; and Webb Franklin, Mississippi. . . .

### § 1.3 A Member-elect who has not yet taken the oath is elected to committees "when sworn."

On January 6, 1999,<sup>(38)</sup> the following committee election resolutions were agreed to:

#### ELECTION OF MAJORITY MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. [Julius Caesar (J.C.)] WATTS of Oklahoma. Mr. Speaker, by direction of the Republican Conference, I offer a privileged resolution (H. Res. 6) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 6

*Resolved*, That the following named Members be, and are hereby elected to serve on standing committees as follows:

Committee on Agriculture: Mr. Combest, Chairman; Mr. Barrett of Nebraska; Mr. Boehner; Mr. Ewing; Mr. Goodlatte; Mr. Pombo; Mr. Canady; Mr. Smith of Michigan; Mr. Everett; Mr. Lucas of Oklahoma; Mrs. Chenoweth; Mr. Hostettler; Mr. Chambliss; Mr. LaHood; Mr. Moran of Kansas; Mr. Schaffer; Mr. Thune; Mr. Jenkins; Mr. Cooksey; Mr. Calvert; Mr. Gutknecht; Mr. Riley; Mr. Walden; Mr. Simpson; Mr. Ose; Mr. Hayes; and Mr. Fletcher. . . .

Committee on International Relations: Mr. Gilman, Chairman; Mr. Goodling; Mr. Leach; Mr. Hyde; Mr. Bereuter; Mr. Smith of New Jersey; Mr. Burton of Indiana; Mr.

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37. Thomas O'Neill (MA).

38. 147 CONG. REC. 235-37, 106th Cong. 1st Sess.

Gallegly (when sworn); Ms. Ros-Lehtinen; Mr. Ballenger; Mr. Rohrabacher; Mr. Manzullo; Mr. Royce; Mr. King; Mr. Chabot; Mr. Sanford; Mr. Salmon; Mr. Houghton; Mr. Campbell; Mr. McHugh; Mr. Brady of Texas; Mr. Burr of North Carolina; Mr. Gillmor; Mr. Radanovich; Mr. Cooksey; and Mr. Tancredo.

Committee on the Judiciary: Mr. Hyde, Chairman; Mr. Sensenbrenner; Mr. McCollum; Mr. Gekas; Mr. Coble; Mr. Smith of Texas; Mr. Gallegly (when sworn); Mr. Canady; Mr. Goodlatte; Mr. Buyer; Mr. Bryant; Mr. Chabot; Mr. Barr of Georgia; Mr. Jenkins; Mr. Hutchinson; Mr. Pease; Mr. Cannon; Mr. Rogan; Mr. Graham; and Mrs. Bono.

Committee on Resources: Mr. Young of Alaska, Chairman; Mr. Tauzin; Mr. Hansen; Mr. Saxton; Mr. Gallegly (when sworn); Mr. Duncan; Mr. Hefley; Mr. Doolittle; Mr. Gilchrest; Mr. Calvert; Mr. Pombo; Mrs. Cubin; Mrs. Chenoweth; Mr. Radanovich; Mr. Jones; Mr. Thornberry; Mr. Cannon; Mr. Brady of Texas; Mr. Peterson of Pennsylvania; Mr. Hill of Montana; Mr. Schaffer; Mr. Gibbons; Mr. Souder; Mr. Walden; Mr. Sherwood; Mr. Hayes; Mr. Simpson, and Mr. Tancredo. . . .

Mr. WATTS of Oklahoma (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore.<sup>(39)</sup> Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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#### ELECTION OF MINORITY MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. [Jonas] FROST [of Texas]. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 7) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 7

*Resolved*, That the following named Members, Delegates and the Resident Commissioner be, and are hereby, elected to serve on standing committees as follows:

Committee on Agriculture: Mr. Stenholm, Texas; Mr. Brown, California; Mr. Condit, California; Mr. Peterson, Minnesota; Mr. Dooley, California; Mrs. Clayton, North Carolina; Mr. Minge, Minnesota; Mr. Hillard, Alabama; Mr. Pomeroy, North Dakota; Mr. Holden, Pennsylvania; Mr. Bishop, Georgia; Mr. Thompson, Mississippi; Mr. Baldacci, Maine; Mr. Berry, Arkansas; Mr. Goode, Virginia; Mr. McIntyre, North Carolina; Ms. Stabenow, Michigan; Mr. Etheridge, North Carolina; Mr. John, Louisiana; Mr. Boswell, Iowa; Mr. Phelps, Illinois; Mr. Lucas, Kentucky; and Mr. Thompson, California.

Committee on Appropriations: Mr. Obey, Wisconsin; Mr. Murtha, Pennsylvania; Mr. Dicks, Washington; Mr. Sabo, Minnesota; Mr. Dixon, California; Mr. Hoyer, Maryland (When Sworn); Mr. Mollohan, West Virginia (When Sworn); Ms. Kaptur, Ohio; Ms. Pelosi, California; Mr. Visclosky, Indiana; Mrs. Lowey, New York; Mr. Serrano, New York; Ms. DeLauro, Connecticut; Mr. Moran, Virginia; Mr. Olver, Massachusetts; Mr. Pastor, Arizona; Mrs. Meeke, Florida; Mr. Price, North Carolina; Mr. Edwards, Texas; Mr. Cramer, Alabama; Mr. Clyburn, South Carolina; Mr. Hinchey, New York; Ms. Roybal-Allard, California; Mr. Farr, California (When Sworn); Mr. Jackson, Illinois; Ms. Kilpatrick, Michigan; Mr. Boyd, Florida. . . .

Committee on Education and the Workforce: Mr. Clay, Missouri; Mr. George Miller, California (when sworn); Mr. Kildee, Michigan; Mr. Martinez, California; Mr. Owens, New York; Mr. Payne, New Jersey; Mrs. Mink, Hawaii; Mr. Andrews, New Jersey; Mr. Roemer, Indiana; Mr. Scott, Virginia; Ms. Woolsey, California; Mr. Romero-Barcelo, Puerto Rico; Mr. Fattah, Pennsylvania; Mr. Hinojosa, Texas; Mrs. McCarthy, New York; Mr. Tierney, Massachusetts; Mr. Kind, Wisconsin; Ms. Sanchez, California; Mr. Ford, Tennessee; Mr. Kucinich, Ohio; Mr. Wu, Oregon; Mr. Holt, New Jersey.

Committee on Government Reform: Mr. Waxman, California; Mr. Lantos, California; Mr. Wise, West Virginia; Mr. Owens, New York; Mr. Towns, New York; Mr. Kanjorski,

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39. Ray H. LaHood (IL).

Pennsylvania; Mr. Condit, California; Mrs. Mink, Hawaii; Mrs. Maloney, New York; Mrs. Norton, District of Columbia; Mr. Fattah, Pennsylvania; Mr. Cummings, Maryland; Mr. Kucinich, Ohio; Mr. Blagojevich, Illinois; Mr. Davis, Illinois; Mr. Tierney, Massachusetts; Mr. Turner, Texas; Mr. Allen, Maine, Mr. Ford, Tennessee.

Committee on House Administration: Mr. Hoyer, Maryland (When Sworn). . . .

Committee on Resources: Mr. George Miller, California (When Sworn); Mr. Rahall, West Virginia; Mr. Vento, Minnesota; Mr. Kildee, Michigan; Mr. DeFazio, Oregon; Mr. Faleomavaega, American Samoa; Mr. Abercrombie; Hawaii; Mr. Ortiz, Texas; Mr. Pickett, Virginia; Mr. Pallone, New Jersey; Mr. Dooley, California; Mr. Romero-Barcelo, Puerto Rico; Mr. Underwood, Guam; Mr. Kennedy, Rhode Island; Mr. Smith, Washington; Mr. Delahunt, Massachusetts; Mr. John, Louisiana; Ms. Christian-Green, Virgin Islands; Mr. Kind, Wisconsin; Mr. Inslee, Washington; Ms. Napolitano, California; Mr. Udall, New Mexico; Mr. Udall, Colorado; Mr. Crowley, New York. . . .

Committee on Ways and Means: Mr. Rangel, New York; Mr. Stark (When Sworn); California; Mr. Matsui, California; Mr. Coyne, Pennsylvania; Mr. Levin, Michigan; Mr. Cardin, Maryland; Mr. McDermott, Washington; Mr. Kleczka, Wisconsin; Mr. Lewis, Georgia; Mr. Neal, Massachusetts; Mr. McNulty, New York; Mr. Jefferson, Louisiana; Mr. Tanner, Tennessee; Mr. Becerra, California; Ms. Thurman, Florida; Mr. Doggett, Texas.

Permanent Select Committee on Intelligence: Mr. Dixon, California.

Mr. FROST (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

### ***Other Types of Oaths Distinguished***

#### **§ 1.4 Pursuant to clause 13 of rule XXIII,<sup>(40)</sup> the Clerk publishes the names of Members who have signed the oath required for access to classified information.<sup>(41)</sup>**

On February 14, 2001,<sup>(42)</sup> the following was published in the *Congressional Record*:

#### OATH FOR ACCESS TO CLASSIFIED INFORMATION

Under clause 13 of rule XXIII, the following Members executed the oath for access to classified information:

Neil Abercrombie, Aníbal Acevedo-Vilá, Gary L. Ackerman, Robert B. Aderholt, W. Todd Akin, Robert E. Andrews, Richard K. Armey, Spencer Bachus, Brian Baird, Richard H. Baker, John Elias E. Baldacci, Tammy Baldwin, Cass Ballenger, Bob Barr, Roscoe G. Bartlett, Joe Barton, Charles F. Bass, Ken Bentsen, Doug Bereuter, Shelley Berkley, Howard L. Berman, Judy Biggert, Michael Bilirakis, Rod R. Blagojevich, Roy Blunt, Sherwood L. Boehlert, John A. Boehner, Henry Bonilla, David E. Bonior, Robert A. Borski, Leonard L. Boswell, Rick Boucher, Kevin Brady, Robert A. Brady, Corrine Brown, Sherrod Brown, Henry E. Brown, Jr., Ed Bryant, Richard Burr, Dan Burton, Steve Buyer, Sonny Callahan, Ken Calvert, Dave Camp, Chris Cannon, Eric Cantor, Shelley Moore Capito, Lois Capps, Benjamin L. Cardin, Brad Carson, Michael N. Castle, Steve Chabot,

**40.** *House Rules and Manual* § 1095 (2017).

**41.** *Parliamentarian's Note*: This publication requirement was added in the 107th Congress. H. Res. 5, 147 CONG. REC. 24–26, 107th Cong. 1st Sess. (Jan. 3, 2001).

**42.** 147 CONG. REC. 2044, 2045, 107th Cong. 1st Sess.

Saxby Chambliss, Wm. Lacy Clay, Eva M. Clayton, Howard Coble, Mac Collins, Larry Combest, Gary A. Condit, Christopher Cox, William J. Coyne, Philip P. Crane, Ander Crenshaw, Joseph Crowley, Barbara Cubin, John Abney Culberson, Randy “Duke” Cunningham, Danny K. Davis, Jo Ann Davis, Thomas M. Davis, Nathan Deal, Peter A. DeFazio, Diana DeGette, William D. Delahunt, Rosa L. DeLauro, Tom DeLay, Jim DeMint, Peter Deutsch, Lincoln Diaz-Balart, Norman D. Dicks, John D. Dingell, Lloyd Doggett, Calvin M. Dooley, John T. Doolittle, Michael F. Doyle, David Dreier, John J. Duncan, Jr., Jennifer Dunn, Chet Edwards, Vernon J. Ehlers, Robert L. Ehrlich, Jr., Jo Ann Emerson, Eliot L. Engel, Phil English, Lane Evans, Terry Everett, Sam Farr, Mike Ferguson, Jeff Flake, Ernie Fletcher, Mark Foley, Vito Fossella, Barney Frank, Rodney P. Frelinghuysen, Martin Frost, Elton Gallegly, Greg Ganske, George W. Gekas, Richard A. Gephardt, Jim Gibbons, Wayne T. Gilchrest, Paul E. Gillmor, Benjamin A. Gilman, Charles A. Gonzalez, Virgil H. Goode, Jr., Bob Goodlatte, Bart Gordon, Porter J. Goss, Lindsey O. Graham, Kay Granger, Sam Graves, Gene Green, Mark Green, James C. Greenwood, Felix J. Grucci, Jr., Gil Gutknecht, Tony P. Hall, James V. Hansen, Jane Harman, Melissa A. Hart, J. Dennis Hastert, Alcee L. Hastings, Doc Hastings, Robin Hayes, J. D. Hayworth, Joel Hefley, Wally Herger, Van Hilleary, Earl F. Hilliard, Maurice D. Hinchey, David L. Hobson, Joseph M. Hoeffel, Peter Hoekstra, Rush D. Holt, Michael M. Honda, Darlene Hooley, Stephen Horn, John N. Hostettler, Amo Houghton, Steny H. Hoyer, Kenny C. Hulshof, Asa Hutchinson, Henry J. Hyde, Jay Inslee, Johnny Isakson, Steve Israel, Darrell E. Issa, Ernest J. Istook, Jr., Jesse L. Jackson, Jr., Sheila Jackson-Lee, William J. Jefferson, William L. Jenkins, Christopher John, Eddie Bernice Johnson, Nancy L. Johnson, Sam Johnson, Timothy V. Johnson, Stephanie Tubbs Jones, Walter B. Jones, Paul E. Kanjorski, Marcy Kaptur, Ric Keller, Sue W. Kelly, Mark R. Kennedy, Patrick J. Kennedy, Brian D. Kerns, Dale E. Kildee, Ron Kind, Peter T. King, Jack Kingston, Mark Steven Kirk, Gerald D. Kleczka, Joe Knollenberg, Jim Kolbe, Dennis J. Kucinich, Ray H. LaHood, Nick Lampson, James R. Langevin, Steve Largent, John B. Larson, Tom Latham, Steven C. LaTourette, James A. Leach, Barbara Lee, Sander M. Levin, Jerry Lewis, John Lewis, Ron Lewis, John Linder, William O. Lipinski, Frank A. LoBiondo, Zoe Lofgren, Nita M. Lowey, Frank D. Lucas, Ken Lucas, Bill Luther, Carolyn B. Maloney, James H. Maloney, Donald A. Manzullo, Edward J. Markey, Frank Mascara, Robert T. Matsui, Carolyn McCarthy, Jim McCrery, John McHugh, Scott McInnis, Howard P. McKeon, Michael R. McNulty, Martin T. Meehan, Carrie P. Meek, Gregory W. Meeks, John L. Mica, Dan Miller, Gary G. Miller, Patsy T. Mink, John Joseph Moakley, Alan B. Mollohan, Dennis Moore, James P. Moran, Jerry Moran, Constance A. Morella, John P. Murtha, Sue Wilkins Myrick, Jerrold Nadler, George R. Nethercutt, Jr., Robert W. Ney, Anne M. Northup, Charlie Norwood, Jim Nussle, James L. Oberstar, David R. Obey, John W. Olver, Tom Osborne, Doug Ose, C. L. Otter, Michael G. Oxley, Frank Pallone, Jr., Bill Pascrell, Jr., Ed Pastor, Nancy Pelosi, Mike Pence, Collin C. Peterson, John E. Peterson, Thomas E. Petri, David D. Phelps, Charles W. Pickering, Joseph R. Pitts, Todd Russell Platts, Richard W. Pombo, Rob Portman, Deborah Pryce, Adam H. Putnam, Jack Quinn, George Radanovich, Nick J. Rahall, II, Jim Ramstad, Charles B. Rangel, Ralph Regula, Dennis R. Rehberg, Silvestre Reyes, Thomas M. Reynolds, Bob Riley, Lynn N. Rivers, Ciro D. Rodriguez, Tim Roemer, Harold Rogers, Mike Rogers, Dana Rohrabacher, Ileana Ros-Lehtinen, Steven R. Rothman, Marge Roukema, Edward R. Royce, Bobby L. Rush, Paul Ryan, Jim Ryun, Martin Olav Sabo, Loretta Sanchez, Bernard Sanders, Max Sandlin, Tom Sawyer, Jim Saxton, Joe Scarborough, Bob Schaffer, Janice D. Schakowsky, Adam B. Chiffon, Edward L. Schlock, F. James Ensemble, Jr., José E. Serrano, Pete Sessions, John B. Shadegg, E. Clay Shaw, Jr., Christopher Shays, Brad Sherman, Don Sherwood, John Shimkus, Ronnie Shows, Rob Simmons, Michael K. Simpson, Joe Skeen, Ike Skelton, Louise McIntosh Slaughter, Christopher H. Smith, Lamar S. Smith, Nick Smith, Vic Snyder, Mark E. Souder, Floyd Spence, John N. Spratt, Jr., Cliff Stearns, Charles W. Stenholm, Bob Stump, Bart Stupak, John E. Sununu, John E. Sweeney, Thomas G. Tancredo, Ellen O. Tauscher, W. J. (Billy) Tauzin, Charles H. Taylor, Lee Terry, William M. Thomas, Bennie G. Thompson, Mike Thompson, Mac Thornberry, John R. Thune, Karen L. Thurman, Todd Tiahrt, Patrick J. Tiberi, John F. Tierney, Patrick J. Toomey, James A. Traficant, Jr., Mark Udall, Robert A. Underwood, Fred Upton, Peter J. Visclosky, David Vitter, Greg Walden, James T. Walsh, Zach Wamp, Maxine Waters, Wes Watkins, J.C. Watts, Jr., Henry A. Waxman, Curt Weldon, Dave Weldon, Jerry Weller, Ed Whitfield, Roger F. Wicker, Heather Wilson, Frank R. Wolf, Lynn C. Woolsey, Albert Russell Wynn, C.W. Bill Young, Don Young.

**§ 1.5 The Chair announced that a classified briefing<sup>(43)</sup> for Members would be presented in the Chamber of the House during a recess to be declared under clause 12 of rule I.<sup>(44)</sup>**

On September 12, 2001 (legislative day of September 11, 2001),<sup>(45)</sup> the Chair made the following announcement regarding a security briefing to take place during a recess of the House:

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. [Ray] LAHOOD [of Illinois]). The Chair desires to announce that following the declaration of recess today, Members are invited to attend a classified briefing here in the Chamber during the recess.

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RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair, and the Chamber will be cleared of all unauthorized personnel or guests.

Accordingly (at 11 o'clock and 25 minutes a.m.), the House stood in recess subject to the call of the Chair.

***Salary and Compensation***

**§ 1.6 By unanimous consent, the House considered and agreed to a resolution authorizing the Clerk: (1) to pay compensation from the contingent fund in lieu of salary to a Member-elect who was unable to take the oath of office due to illness;<sup>(46)</sup> and (2) to designate**

43. *Parliamentarian's Note*: The Parliamentarian prepared the following announcement for the Speaker to make at the start of the briefing: "The Chair would remind all Members that under the Code of Official Conduct Members are not allowed access to classified information before they have executed the oath embodied in clause 13 of rule XXIII (*House Rules and Manual* § 1095 (2017)). That oath is currently available in the Chamber for Members to execute, and the Clerk has maintained a list of those Members who have yet to execute it. As always, Members are not to disclose classified information imparted during this briefing during the forthcoming debate in the House or in any other unauthorized manner. Members are reminded to disable all electronic devices." For other instances of closed security briefings for Members, see *Precedents* (Wickham) Ch. 1 § 10.

44. *House Rules and Manual* § 638 (2017).

45. 147 CONG. REC. 16761, 107th Cong. 1st Sess.

46. *Parliamentarian's Note*: The House may declare the seat of a Member-elect vacant where a Member-elect is not able to take the oath or resign due to an incapacitating illness. Gladys Noon Spellman, of Maryland, was elected to the 97th Congress. At the convening of that Congress, Member-elect Spellman was in a coma and unable to take

**clerk-hire employees of that Member-elect to be compensated at present salaries until a successor were elected to fill a possible vacancy.**

On January 27, 1981,<sup>(47)</sup> the following resolution was adopted by the House:

COMPENSATION IN LIEU OF SALARY TO THE HONORABLE GLADYS NOON SPELLMAN

Mr. [Gillis] LONG of Louisiana. Mr. Speaker, I send to the desk a resolution (H. Res. 41) relating to compensation in lieu of salary to GLADYS NOON SPELLMAN, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 41

*Resolved*, That, from the contingent fund of the House of Representatives, the Clerk of the House of Representatives shall, at the end of each month pay as compensation in lieu of salary to Gladys Noon Spellman an amount equal to the compensation which would be payable in accordance with section 39 of the Revised Statutes (2 U.S.C. 35) but for her inability to subscribe to the oath of office. The Clerk shall deduct from any such payment the amounts necessary to provide for continued (1) health and life insurance and retirement benefit coverage and (2) Federal and State income tax withholding.

SEC. 2. (a) Until otherwise provided by law or by action of the House of Representatives, administrative support may be provided and clerical assistants for the office of Gladys Noon Spellman may be designated and adjusted by the Clerk of the House of Representatives (in accordance with any regulations prescribed under subsection (b)) and borne upon the clerk hire payrolls of the House of Representatives. The Clerk shall take such action as may be necessary to apply the principles of section 2 of the joint resolution entitled "Joint resolution relating to the continuance on the payrolls of certain employees in cases of death or resignation of Members of the House of Representatives, Delegates, and Resident Commissioners.", approved August 21, 1935 (2 U.S.C. 92c), to clerical assistants employed pursuant to the preceding sentence.

(b) The Committee on House Administration shall have authority to prescribe regulations for the carrying out of this section.

(c) Payments under this section shall be made on vouchers approved by the Committee on House Administration and signed by the chairman of such committee.

The SPEAKER pro tempore.<sup>(48)</sup> Is there objection to the request of the gentleman from Louisiana? . . .

Mr. [Trent] LOTT [of Mississippi]. All right. Would this in any way affect the proxy voting in subcommittees or committees, this resolution?

Mr. LONG of Louisiana. I am informed that because of the fact that the Member has not been sworn in, there would be no voting rights in this instance.

Mr. LOTT. I thank the gentleman. . . .

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The resolution was agreed to.

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the oath or resign. The House adopted by voice vote a resolution declaring the seat vacant on February 24, 1981. See 127 CONG. REC. 2917, 97th Cong. 1st Sess.

47. 127 CONG. REC. 974, 975, 97th Cong. 1st Sess.

48. Thomas Foley (WA).

**§ 1.7 The administration of the oath of office to a Member-elect was delayed pending his resignation from an incompatible office.<sup>(49)</sup>**

On January 9, 1995,<sup>(50)</sup> five days after the convening of the Congress, the following occurred:

SWEARING IN OF THE HONORABLE J.C. WATTS

The SPEAKER.<sup>(51)</sup> Will the Honorable J.C. WATTS of Oklahoma kindly step forward and take the oath of office.

Mr. [J.C.] WATTS of Oklahoma appeared at the bar of the House and took the following oath of office:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely; without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter. So help you God.

The SPEAKER. Congratulations. The gentleman from Oklahoma is a Member of the U.S. House of Representatives.

**§ 1.8 The House by unanimous consent granted a leave of absence<sup>(52)</sup> to a Member-elect who had not been administered the oath of office.**

On January 5, 2011,<sup>(53)</sup> the first day of the 112th Congress, the following occurred:

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. DEFAZIO (at the request of Ms. PELOSI) for today on account of official business in the district.

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**49.** *Parliamentarian's Note:* Rep. J.C. Watts of Oklahoma was not sworn on opening day as he held an incompatible office at that time (Corporation Commissioner, a state elective office). Rep. Watts was advised that he would become entitled to pay from the beginning of the Congress after taking the oath of office (14 Op. Att'y Gen. 408 (1874)). For more information on the issue of incompatible offices, see Deschler's Precedents Ch. 7 § 13 and Precedents (Wickham) Ch. 7.

**50.** 141 CONG. REC. 842, 104th Cong. 1st Sess.

**51.** Newt Gingrich (GA).

**52.** For more information on Members' salaries and leaves of absence, see Deschler's Precedents Ch. 7 § 5 and Precedents (Wickham) Ch. 7.

**53.** 157 CONG. REC. 106, 112th Cong. 1st Sess.

## § 2. Presentation of Credentials and the Clerk's Roll

The procedures for enrolling Members on opening day of a new Congress derive from constitutional and statutory provisions, as well as general parliamentary law and the customs and traditions of the House.<sup>(1)</sup> The first step in this process is the presentation of appropriate credentials from state election officials. These credentials take the form of a specific document known as the certificate of election, which is certified by a state executive official and attests that the individual named was duly elected to the House.<sup>(2)</sup> Certificates of election are transmitted to the Clerk of the House and may arrive any time between the election and the opening of the new Congress. The Clerk gathers together such certificates and uses them to compose a roll of Members–elect.<sup>(3)</sup>

The Clerk generally will not include a Member–elect on the Clerk's roll if such individual is not supported by a certificate of election.<sup>(4)</sup> The Clerk may review state law to determine if the certificate is in proper form and validly issued.<sup>(5)</sup> On occasion, certificates of election have not been transmitted to the Clerk in time for the Members–elect to be included on the Clerk's roll on opening day. In such circumstances, the House has, by unanimous consent, permitted the individuals to be included in the roll (where there was no controversy as to the election, the delay in transmitting credentials being a purely administrative matter).<sup>(6)</sup> If a notice of an election contest has been filed, but the Member–elect appears with proper credentials, such Member–elect will be included on the Clerk's roll, without prejudice to the final determination as to which individual is entitled to that seat.<sup>(7)</sup>

When a Member–elect dies before the new Congress convenes, such Member–elect's name remains on the Clerk's roll, and is only removed therefrom

1. For organizational steps at the beginning of a Congress, see generally Deschler's Precedents Ch. 1 and Precedents (Wickham) Ch. 1.
2. For more on certificates of election generally, see Deschler's Precedents Ch. 8 §§ 15–17.
3. 2 U.S.C. § 26. In the absence or incapacity of the Clerk, the duty of composing the roll of Members–elect devolves to the Sergeant–at–Arms. For an example of the Doorkeeper (a position abolished in the 104th Congress) assuming these functions in the absence of both the Clerk and the Sergeant–at–Arms, see Deschler's Precedents Ch. 2 § 4.2.
4. *Parliamentarian's Note*: For the last known instance of the Clerk including a Member–elect on the Clerk's roll without having received a certificate of election (but having received a communication from the Governor regarding an issue of state election law), see Deschler's Precedents Ch. 2 § 4.4.
5. See, e.g., Deschler's Precedents Ch. 2 § 4.3.
6. See §§ 2.1, 2.2, *infra*.
7. For parliamentary inquiries on this issue, see § 2.3, *infra*.

after the initial quorum call and a subsequent announcement by the Clerk that a vacancy exists for that congressional seat.<sup>(8)</sup> Similarly, a Member-elect who declines to take a seat (*i.e.*, resigns as a Member-elect for the upcoming Congress) remains on the Clerk's roll until formal notification of such resignation can be laid before the House and the vacancy announced.<sup>(9)</sup>

The Clerk's roll lists Members-elect alphabetically by state, and is called only once, at the beginning of a new Congress, to establish a quorum.<sup>(10)</sup> Once this initial quorum is established, the House may then proceed to the organization of the House. The Clerk's roll serves as the formal list of those individuals authorized to participate in those additional steps of organization, which include the election of the Speaker and proceedings prior thereto.<sup>(11)</sup>

### ***Composing the Clerk's Roll***

**§ 2.1 At the beginning of a Congress, Members-elect from a state have been permitted, by unanimous consent, to record their presence during the first quorum call and to vote for the Speaker, where certificates of election had not been received by the Clerk (due to state administrative delay in certifications of all elections in that state) and there was no contest with respect to such elections.**<sup>(12)</sup>

For the January 4, 1995,<sup>(13)</sup> proceedings, see Precedents (Wickham) Ch. 1 § 3.6.

8. See § 2.4, *infra*. See also Deschler's Precedents Ch. 2 § 4.7. For contrary instances where the Clerk removed a Member-elect's name from the roll upon notification of the death of said Member-elect, see Deschler's Precedents Ch. 2 §§ 4.6, 4.8, and 4.9.

9. See § 2.5, *infra*.

10. See Deschler's Precedents Ch. 1 § 5.1 and Deschler's Precedents Ch. 2 § 4.1.

11. See Deschler's Precedents Ch. 1 § 6.1.

12. *Parliamentarian's Note*: The Secretary of State for the state of Alabama withheld the certificates of election for the entire delegation until a contested state-level election was resolved. In lieu of the certificates, the Secretary of State sent a letter unofficially informing the House that the members of the delegation had received a majority of votes. The official certificates of election were not received until a month later. Unanimous consent was required to permit the delegation to participate in the quorum call and to vote for the Speaker because a Member-elect has the right to be included on the Clerk's roll only if a certificate of election, in due form, is on file with the Clerk; and only those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker or to participate in organizational proceedings prior to the administration of the oath. A claimant not on the roll, however, may take the oath and be admitted to membership. See Deschler's Precedents Ch. 2 § 2.

13. 141 CONG. REC. 439, 446, 104th Cong. 1st Sess.

**§ 2.2 Where the official certificate of election for a Member-elect is not received by the Clerk prior to the opening of a new Congress, thus preventing such Member-elect from being included on the Clerk's roll, unanimous consent is required to allow such Member-elect to register his or her presence during the initial quorum call and to vote for Speaker.<sup>(14)</sup>**

On January 7, 2003,<sup>(15)</sup> the following occurred:

The CLERK.<sup>(16)</sup> Representatives-elect, this is the day fixed by the 20th amendment to the Constitution and Public Law 107-328 for the meeting of the 108th Congress and, as the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect.

Certificates of election covering 434 seats in the 108th Congress have been received by the Clerk of the House, and the names of those persons whose credentials show that they were regularly elected as Representatives in accordance with the laws of their respective States or of the United States will be called.

The Clerk lays before the House a facsimile of a communication from the Chief Election Officer of the State of Hawaii.

JANUARY 5, 2003.

Hon. JEFF TRANDAHL,  
*Clerk, House of Representatives,*  
*Washington, DC.*

DEAR MR. TRANDAHL: This is to advise you that the unofficial results of the Special Election held on Saturday, January 4, 2003 for Representative in Congress from the Second Congressional District of Hawaii show that Ed Case (D) received 33,002 of votes of the total number cast for that office.

It would appear from the unofficial results that Ed Case (D) was elected Representative from the Second Congressional District of Hawaii. We are unaware of any election contest at this time.

As soon as the official results are certified, an official Certificate of Election will be transmitted as required by law. . . .

Very truly yours,

DWAYNE D. YOSHINA,  
*Chief Election Officer. . . .*

The CLERK. Without objection, the Representative-elect from the Second District of the State of Hawaii will be allowed to record his presence and also to vote on the election of the Speaker.

There was no objection.

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14. *Parliamentarian's Note:* Rep. Patsy Mink of Hawaii died on September 28, 2002, but was reelected posthumously to the 108th Congress. Ed Case won the special election on January 4, 2003, to fill the vacancy caused by her death, but the certificate of election had not been received by the Clerk in time to be included on the Clerk's roll.
15. 149 CONG. REC. 1, 108th Cong. 1st Sess. See also Precedents (Wickham) Ch. 1 § 4.3.
16. Jeff Trandahl.

The CLERK. Without objection, the Representatives–elect will record their presence by electronic device and their names will be reported in alphabetical order by States, beginning with the State of Alabama, to determine whether a quorum is present.

**§ 2.3 In response to parliamentary inquiries, the Speaker informed the House that she had been advised by the Clerk: (1) that notice of an election contest had been filed with respect to an election; (2) that among the credentials of Members–elect were documents reflecting that a Member–elect had been certified by the state official as duly elected; and (3) that the seating of a Member–elect is without prejudice to a contest over final right to the seat.**

On January 4, 2007,<sup>(17)</sup> the Speaker entertained parliamentary inquiries as follows:

#### SWEARING IN OF MEMBERS

The SPEAKER.<sup>(18)</sup> According to precedent, the Chair will swear in the Members–elect en masse.

#### PARLIAMENTARY INQUIRY

Mr. [Rush] HOLT [of New Jersey]. I have a parliamentary inquiry, Madam Speaker.  
The SPEAKER. The gentleman may state his inquiry.

Mr. HOLT. In light of the fact that there are nonpartisan and partisan lawsuits under way with regard to Florida’s 13th Congressional District and that the votes of 18,000 voters were not recorded on the paperless electronic voting machines in an election decided by only 369 votes, may I ask for the record whether a notice of contest has been filed with the Clerk on behalf of CHRISTINE JENNINGS pursuant to law and what effect, if any, today’s proceedings have on the pending contests?

The SPEAKER. The Chair is advised by the Clerk that a notice of contest pursuant to statute, section 382 of title 2, United States Code, has been filed with the Clerk. Under section 5 of article I of the Constitution and the statute, the House remains the judge of the elections of its Members. The seating of this Member–elect is entirely without prejudice to the contest over the final right to that seat that is pending under the statute and will be reviewed in the ordinary course in the Committee on House Administration.

Mr. HOLT. I thank the Speaker.

#### PARLIAMENTARY INQUIRY

Mr. [Adam] PUTNAM [of Florida]. Parliamentary inquiry, Madam Speaker.  
The SPEAKER. The gentleman may state his inquiry.

Mr. PUTNAM. Am I correct, Madam Speaker, that the gentleman from Florida (Mr. BUCHANAN) has been certified by the Secretary of State as duly elected from the 13th District of Florida?

<sup>17</sup>. 153 CONG. REC. 5, 110th Cong. 1st Sess.

<sup>18</sup>. Nancy Pelosi (CA).

The SPEAKER. The gentleman is correct.

Mr. PUTNAM. I thank the Speaker.

The SPEAKER. If the Members–elect will rise, the Chair will now administer the oath of office.

The Members–elect and Delegates–elect and the Resident Commissioner–elect rose, and the Speaker administered the oath of office to them as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now Members of the 110th Congress.

### *Death or Resignation of Member–elect*

**§ 2.4 When a Member–elect dies prior to opening day of a new Congress, such Member–elect’s name is included in the Clerk’s roll (because the certificate of election remains on file with the Clerk), and the Clerk on opening day announces to the House the existence of a vacancy caused by the death of such Member–elect.**

On January 3, 2001,<sup>(19)</sup> the following announcement was made by the Clerk following the initial quorum call of Members–elect for the 107th Congress:

#### ANNOUNCEMENT BY THE CLERK

The CLERK.<sup>(20)</sup> The Clerk will state that since the last regular election of Representatives to the 107th Congress, a vacancy now exists in the 32d District of the State of California, occasioned by the death of the late Honorable Julian C. Dixon.

**§ 2.5 When a Member–elect resigns prior to the beginning of the Congress to which such individual was elected,<sup>(21)</sup> the name of such Member–elect remains on the Clerk’s roll, and the Clerk lays**

19. 147 CONG. REC. 20, 107th Cong. 1st Sess. See also Deschler’s Precedents Ch. 38 § 2.12 and Precedents (Wickham) Ch. 1 § 3.7.

20. Jeff Trandahl.

21. *Parliamentarian’s Note*: Rep. Rahm Emanuel of Illinois, a Member of the 110th Congress and a Member–elect for the 111th Congress, wrote a letter to the Governor of Illinois stating that he resigned “effective January 2, 2009.” Taken literally, such statement could be construed as a resignation only for the final day of the 110th Congress and not as a Member–elect for the 111th Congress. Rep. Emanuel’s letter to the Speaker clarified that he intended not to take his seat in the 111th Congress.

**before the House the letter of resignation following the initial quorum call.**

On January 6, 2009,<sup>(22)</sup> the following communications were laid before the House following the initial quorum call of Members–elect for the 111th Congress:

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The CLERK.<sup>(23)</sup> The Clerk is in receipt of a letter of resignation from the Honorable Rahm Emanuel from the State of Illinois.

Without objection, the letters relating to his resignation will be printed in the RECORD. There was no objection.

DECEMBER 30, 2008.

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR SPEAKER PELOSI: I am writing to inform you that I have notified the Governor of Illinois of my resignation from the U.S. House of Representatives effective January 2, 2009, at the end of the 110th Congress. I do not intend to take the office of Representative for the Fifth Congressional District in the 111th Congress. A copy of that letter is attached.

It has been a privilege to serve the constituents of Illinois' 5th District for the last six years and to work with you and our colleagues in Congress.

Sincerely,

RAHM EMANUEL,  
*Member of Congress.*

JANUARY 2, 2009.

Hon. ROD BLAGOJEVICH,  
*Governor, State of Illinois,*  
*Statehouse, Springfield, IL.*

DEAR GOVERNOR BLAGOJEVICH: I am writing to resign my position as United States Representative from the Fifth Congressional District of Illinois, effective January 2, 2009.

It has been a tremendous privilege to serve the people of the Fifth District over the past six years. I am grateful for the opportunity to represent the hopes and dreams of a quintessentially American district, from hardworking families to new immigrants to the senior citizens who built this great country. It has been my particular privilege to represent the district's many military troops and veterans, who put their lives on the line to protect the values we cherish. Their sense of duty and sacrifice has been an inspiration, which I will carry with me to my new duties as chief of staff to President–elect Barack Obama.

As sons of immigrants to this country, you and I have a deep appreciation for the opportunities America provides to those who are willing to work hard and sacrifice for their

22. 155 CONG. REC. 2, 111th Cong. 1st Sess. See also 151 CONG. REC. 36–39, 41, 109th Cong. 1st Sess. (Jan. 4, 2005).

23. Lorraine Miller.

children. As a member of the next Administration in Washington, I will strive to maintain and expand that opportunity for all families, because the chance to work hard and build a better life is the principle that unites all Americans. Over the past few years, our government in Washington has lost sight of that principle by catering to the wealthiest Americans and powerful special interests—leaving middle-class Americans to struggle with rising health care costs, reduced pensions and a collapsing economy. The recent election was a clarion call for a change in direction, so we can recapture the values that have made our nation a beacon of hope and opportunity.

As I go to work everyday in the incoming Obama Administration, I will keep in mind the stories of the working families and senior citizens who I met during the past six years in grocery stores, schools and churches across the Fifth District. I will strive to make our government work for them and their children, because that is the true measure of our success as a nation.

With gratitude and best wishes,

Sincerely,

RAHM EMANUEL,  
*Member of Congress.*

### § 3. Administering the Oath

As noted in the preceding section, the Clerk's roll is called immediately after the convening of a new Congress, with the Clerk from the previous Congress presiding over the initial quorum call.<sup>(1)</sup> Those Members-elect on the Clerk's roll are entitled to participate in proceedings prior to the election of Speaker and are eligible to vote in such election.<sup>(2)</sup> Members-elect may pose parliamentary inquiries to the Clerk prior to the election of Speaker,<sup>(3)</sup> and may also appeal rulings made by the Clerk.<sup>(4)</sup> Members-elect may propound (and agree to) unanimous-consent requests, such as to permit Members-elect lacking certificates of election to be included in the Clerk's roll.<sup>(5)</sup> Members-elect may vote for Speaker even if they fail to record their presence during the initial quorum call.<sup>(6)</sup>

After the election of Speaker, the Dean of the House (traditionally the Member with the longest continuous service in the House) administers the

1. *Parliamentarian's Note*: When the House convenes for a second (or any subsequent) session, the membership of the body has already been established. Thus, the initial quorum call to begin a second session of a Congress is a regular quorum call of full Members (not Members-elect). See § 3.4, *infra*.
2. *Parliamentarian's Note*: Delegates-elect and the Resident Commissioner-elect, however, are not permitted to vote for Speaker. See *Precedents (Wickham)* Ch. 1 § 3.5.
3. See 143 CONG. REC. 114–20, 105th Cong. 1st Sess. (Jan. 7, 1997).
4. See § 3.4, *infra*.
5. See § 2.1, *supra*.
6. See 143 CONG. REC. 114–120, 105th Cong. 1st Sess. (Jan. 7, 1997).

oath of office to the Speaker-elect. The newly-elected Speaker then administers the oath of office to all other Members-elect *en masse* on the floor of the House.<sup>(7)</sup> It is at this point that Members-elect become full Members of the House, with all associated rights and privileges. Members-elect who are not present for the *en masse* swearing in are administered the oath when they arrive (either on opening day<sup>(8)</sup> or on a subsequent day).<sup>(9)</sup> Before the Speaker administers the oath of office to Members-elect, a challenge may be made to the swearing in of any individual Member-elect or group of Members-elect.<sup>(10)</sup> The Speaker may also respond to parliamentary inquiries regarding any election contests that may have been filed.<sup>(11)</sup>

Members-elect may be sworn in at times other than the beginning of a Congress. Vacancies in House seats may occur at any point during a Congress, most often due to the death or resignation of the Member holding that seat.<sup>(12)</sup> When a vacancy occurs, the state will typically hold a special election to elect another individual to serve out the remainder of the unexpired term.<sup>(13)</sup> For the winner of such special election to take a seat in the House, he or she must present valid credentials in the form of the official certificate of election. Often, there is a delay in the transmittal of the original certificate of election. Authenticated copies of original certificates of election, delivered by fax or via email to the Clerk of the House, have been treated as sufficient documentation to support administering the oath of office to Members-elect, and unanimous consent to administer the oath is not required.<sup>(14)</sup> By contrast, unauthenticated copies of certificates, unofficial vote totals, or other communications from state election officials indicating that an individual has a rightful claim to a seat have not been treated as sufficient documentary evidence. However, absent some known controversy

7. See Deschler's Precedents Ch. 1 § 7.1 and Deschler's Precedents Ch. 2 § 5.1.

*Parliamentarian's Note:* The practice of swearing in Members *en masse* began in 1929 under Speaker Nicholas Longworth of Ohio, replacing the prior custom of swearing in by state delegation. Though several subsequent Speakers reverted to the older practice, Speaker William Bankhead of Alabama returned to swearing in *en masse* at the beginning of the 75th Congress (1937) and this has been the uniform practice ever since.

8. See, *e.g.*, Deschler's Precedents Ch. 2 § 5.13.

9. See, *e.g.*, Deschler's Precedents Ch. 2 §§ 5.14–5.16.

10. See § 4, *infra*.

11. See § 2.3, *supra*.

12. See generally, Deschler's Precedents Ch. 37 and Deschler's Precedents Ch. 38. A vacancy may also arise when a Member of the House is expelled. See Deschler's Precedents Ch. 12 § 13 and Precedents (Wickham) Ch. 12.

13. See, *e.g.*, Deschler's Precedents Ch. 2 § 3.6.

14. See §§ 3.5, 3.6, *infra*.

regarding the election, the House will often grant unanimous consent to allow the presumed winner of the election to be sworn in as a Member.<sup>(15)</sup> In special circumstances, the House may adopt a resolution authorizing the Speaker to administer the oath of office to a new Member-elect.<sup>(16)</sup> Often this will occur when there is some controversy over the election (for example, a pending election contest) and unanimous consent cannot be obtained to administer the oath.<sup>(17)</sup>

If a special election occurs between sessions of a Congress, the new Member-elect is not included in the initial quorum call at the beginning of the second (or subsequent) session. Instead, the House establishes its quorum first before the Speaker lays before the House the relevant communications indicating that a certificate of election has been received by the Clerk.<sup>(18)</sup> However, if only insufficient documentation is available, unanimous consent is required to administer the oath.<sup>(19)</sup>

While it is normally the Speaker who administers the oath of office, this duty may also be performed by a Speaker pro tempore.<sup>(20)</sup> An elected Speaker pro tempore may administer the oath without the need for any separate authorization because such individual exercises virtually all the authorities granted to the Speaker.<sup>(21)</sup> By contrast, an appointed Speaker pro tempore merely undertakes certain duties (such as presiding over the House or signing enrolled bills) and thus unanimous consent is required to allow such person to administer the oath of office to a Member-elect.<sup>(22)</sup>

The House may also authorize the Speaker to deputize another to administer the oath of office. Most often, this is done when the Member-elect cannot travel to Washington, D.C., to be present on opening day of a new Congress (due to illness, for example). For these circumstances, the House will adopt a resolution conferring on the Speaker the authority to name a deputy to administer the oath.<sup>(23)</sup> Such resolutions are privileged for consideration.<sup>(24)</sup> The Speaker may deputize anyone to administer the oath of office,

15. See §§ 3.10, 3.11, *infra*. See also Deschler's Precedents Ch. 2 §§ 3.1–3.5.

16. See Deschler's Precedents Ch. 2 §§ 5.5–5.7.

17. See §§ 3.7, 3.9, *infra*.

18. See § 3.4, *infra*. See also Deschler's Precedents Ch. 2 § 4.11. If the original certificate of election has arrived, the oath may be administered before the quorum call, as the administration of the oath of office does not require the presence of a quorum. See 6 Cannon's Precedents § 22.

19. Unanimous-consent requests are not considered business that requires a quorum. Deschler's Precedents Ch. 20 § 18.7.

20. For full treatment of the office of Speaker pro tempore, see Deschler's Precedents Ch. 6 §§ 9–14 and Precedents (Wickham) Ch. 6.

21. See § 3.12, *infra*.

22. See Deschler's Precedents Ch. 2 § 5.2.

23. See § 3.13, *infra*. See also Deschler's Precedents Ch. 2 §§ 5.8–5.12.

24. See, *e.g.*, H. Res. 8, 133 CONG. REC. 19, 100th Cong. 1st Sess. (Jan. 6, 1987) and H. Res. 25, 133 CONG. REC. 820, 821, 100th Cong. 1st Sess. (Jan. 7, 1987)

though this function is typically performed by a Federal or state judge,<sup>(25)</sup> and occasionally by another Member of the House.<sup>(26)</sup> When the oath is administered, the person deputized to administer the oath informs the Speaker, who lays such communication before the House.<sup>(27)</sup> The House formally “accepts” the oath administered by a deputy, either in the resolution authorizing the Speaker to deputize<sup>(28)</sup> or by separate resolution.<sup>(29)</sup>

The administration of the oath of office is a matter of high privilege, and takes precedence over other business, such as a motion to amend the Journal.<sup>(30)</sup> The administration of the oath may take place during a vote,<sup>(31)</sup> during a quorum call,<sup>(32)</sup> during consideration of a resolution proposing a special order of business,<sup>(33)</sup> during the consideration of a resolution adopting the standing rules of the House,<sup>(34)</sup> and during the call of committees on Calendar Wednesday.<sup>(35)</sup> The oath may be administered after the previous question has been ordered on a pending matter,<sup>(36)</sup> and also pending the question of engrossment and third reading of a bill (with the previous question operating to final passage).<sup>(37)</sup> As noted earlier, the administration of the oath does not require the presence of a quorum.<sup>(38)</sup> Where the House adopts a resolution authorizing the Speaker to administer the oath, the oath cannot be deferred, even by a motion to adjourn.<sup>(39)</sup> However, where the Member-elect is not present in the Chamber to take the oath, the Speaker may recognize for a motion to adjourn.<sup>(40)</sup>

### ***Opening Day—First Session***

**§ 3.1 Where no challenge is made to the seating of any Member-elect, the Speaker administers the oath of office to Members-elect *en masse*.**

25. See § 3.13, *infra*.

26. See 129 CONG. REC. 52, 98th Cong. 1st Sess. (Jan. 3, 1983).

27. See § 3.14, *infra*.

28. See § 3.13, *infra*.

29. See § 3.15, *infra*.

30. See 1 Hinds' Precedents § 171.

31. See §§ 3.18, 3.21, *infra*.

32. See § 3.16, *infra*.

33. See Deschler's Precedents Ch. 2 § 5.18.

34. See § 3.20, *infra*.

35. See § 3.22, *infra*.

36. See Deschler's Precedents Ch. 2 § 5.17.

37. See § 3.19, *infra*.

38. See 6 Cannon's Precedents § 22.

39. See 1 Hinds' Precedents § 622.

40. See § 3.17, *infra*.

On January 3, 2013,<sup>(41)</sup> opening day of the first session of the 113th Congress, Members–elect were administered the oath of office *en masse* as follows:

## SWEARING IN OF MEMBERS

The SPEAKER.<sup>(42)</sup> According to precedent, the Chair will swear in the Members–elect *en masse*.

The Members–elect will rise and raise their right hands.

The Members–elect rose, and the Speaker administered the oath of office to them as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations, you are now Members of the 113th Congress.

**§ 3.2 The Speaker administered the oath of office to twelve Members–elect.**<sup>(43)</sup>

On January 7, 2015,<sup>(44)</sup> the following occurred:

## SWEARING IN OF MEMBERS–ELECT

The SPEAKER.<sup>(45)</sup> Will the Representatives–elect please present themselves in the well.

Mr. CROWLEY of New York, Mr. ENGEL of New York, Mr. HIGGINS of New York, Mrs. LOWEY of New York, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Mr. MEEKS of New York, Ms. MENG of New York, Mr. NADLER of New York, Mr. RANGEL of New York, Mr. TONKO of New York, and Ms. VELÁZQUEZ of New York appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now Members of the 114th Congress.

41. 159 CONG. REC. H5 [Daily Ed.], 113th Cong. 1st Sess.

42. John Boehner (OH).

43. *Parliamentarian’s Note*: This group swearing in immediately following the pledge was the result of the absence of many Members–elect of the New York delegation on opening day due to their attendance at a memorial service. Due to the large number, the Chair’s announcement was generic (“Representatives–elect”) rather than specific. When the number is three or fewer, the Chair lists each Member–elect and state.

44. 161 CONG. REC. H55 [Daily Ed.], 114th Cong. 1st Sess.

45. John Boehner (OH).

**§ 3.3 Where two Members–elect participated in various House and committee business before taking the oath of office, the House adopted a resolution correcting the results of record votes to remove mention of such Members–elect and ratifying numerous legislative activities involving one or both of such Members–elect.<sup>(46)</sup>**

On January 7, 2011,<sup>(47)</sup> where two Members–elect had mistakenly engaged in legislative activity prior to being sworn, the House adopted a resolution correcting the results of record votes (to remove the names of such Members–elect) and ratifying *post facto* various other actions taken by such Members–elect:

RELATING TO THE STATUS OF CERTAIN ACTIONS TAKEN BY MEMBERS–ELECT

Mr. [David] DREIER [of California]. Madam Speaker, pursuant to House Resolution 26, I send to the desk as the designee of the majority leader a resolution and ask for its immediate consideration. . . .

The Clerk read as follows:

H. RES. 27

Whereas, Representative–elect Sessions and Representative–elect Fitzpatrick were not administered the oath of office pursuant to the third clause in article VI of the Constitution until after the completion of legislative business on January 6, 2011; and

Whereas, the votes cast by Representative–elect Sessions and Representative–elect Fitzpatrick on rollcalls 3 through 8 therefore were nullities: Now, therefore, be it

*Resolved, That—*

(1) the votes recorded for Representative–elect Sessions and Representative–elect Fitzpatrick on rollcalls 3 through 8 be deleted and the vote–totals for each of those rollcalls be adjusted accordingly, both in the Journal and in the Congressional Record;

(2) the election of Representative–elect Sessions to a standing committee and his participation in its proceedings be ratified;

(3) the measures delivered to the Speaker for referral by Representative–elect Sessions be considered as introduced and retain the numbers assigned;

(4) any submissions to the Congressional Record by Representative–elect Sessions or Representative–elect Fitzpatrick be considered as valid;

(5) any cosponsor lists naming Representative–elect Sessions or Representative–elect Fitzpatrick be considered as valid; and

(6) any non–voting participation by Representative–elect Sessions or Representative–elect Fitzpatrick in proceedings on the floor be ratified. . . .

The SPEAKER pro tempore.<sup>(48)</sup> . . .

**46.** *Parliamentarian’s Note:* Reps. Pete Sessions of Texas and Michael Fitzpatrick of Pennsylvania were mistakenly presumed to have taken the oath of office with the other Members–elect *en masse* on opening day on January 5, 2011. The House proceeded to elect Rep. Sessions to a committee, and one or both of them introduced measures, were named as cosponsors of measures, submitted statements for the *Congressional Record*, participated in the reading on the floor of the Constitution on January 6, 2011, and participated in various quorum calls and electronic votes. Reps. Sessions and Fitzpatrick finally took the oath of office on January 6, 2011. See 155 CONG. REC. 164, 112th Cong. 1st Sess.

**47.** 157 CONG. REC. 227–29, 112th Cong. 1st Sess.

**48.** Candice Miller (MI).

Pursuant to section 3 of House Resolution 26, the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

Mr. [Anthony] WEINER [of New York]. Madam Speaker, I demand a recorded vote. A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 257, noes 159, answered “present” 3, not voting 15, as follows:

***Opening Day—Second Session***

**§ 3.4 Members—elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes, and their names are included on the roll only after their certificates of election have been laid before the House and after the oath has been administered to them.**

On January 25, 1988,<sup>(49)</sup> after the initial quorum call for the second session of the 100th Congress had taken place, the following communications were laid before the House:

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,  
*January 25, 1988.*

Hon. JIM WRIGHT,  
*The Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a telegram received from the Honorable Gentry Crowell, Secretary of State, State of Tennessee, advising that based upon the unofficial returns the apparent winner of the special election for the Fifth Congressional District of the State of Tennessee held on January 19, 1988, was the Honorable Bob Clement. An official election certificate will be issued by the Secretary of State on January 26, 1988, and transmitted to the House of Representatives.

With great respect, I am,

Sincerely yours,

DONNALD K. ANDERSON,  
*Clerk, House of Representatives.*

<sup>49</sup>. 134 CONG. REC. 38–39, 100th Cong. 2d Sess. See also 128 CONG. REC. 61, 62, 97th Cong. 2d Sess. (Jan. 25, 1982).

[Western Union Telegram]

STATE OF TENNESSEE,  
*Nashville, TN, January 21, 1988.*DONNALD K. ANDERSON,  
*Clerk, U.S. House of Representatives,  
Washington, DC.*

DEAR SIR: This is to advise that a special election to fill the vacant seat from, Tennessee's Fifth Congressional District was held on January 19, 1988. The apparent winner of the election is Bob Clement, Democrat. The unofficial returns are as follows: Bob Clement, 56,090, Terry Holcomb, Republican, 32,765, Joe Driscoll, Independent, 604, Suzanne Stewart, Independent, 678. Official election certification will be completed January 26, certified duplicate original will be sent to you upon completion. Facsimile copy will be sent as well. Thank you for your assistance.

GENTRY CROWELL,  
*Secretary of State.*


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SWEARING IN OF HON. BOB CLEMENT OF TENNESSEE AS A MEMBER OF THE  
HOUSE

Mr. [Ed] JONES of Tennessee. Mr. Speaker, I ask unanimous consent<sup>(50)</sup> that the gentleman from Tennessee, Mr. BOB CLEMENT, be permitted to take the oath of office today. His certificate of election has not arrived, but there is no contest, and no question has been raised with regard to his election.

The SPEAKER.<sup>(51)</sup> Is there objection to the request of the gentleman from Tennessee? There was no objection.

The SPEAKER. Will the Honorable BOB CLEMENT of Tennessee kindly step forward and take the oath of office.

Mr. CLEMENT appeared at the bar of the House and took the oath of office.

The SPEAKER. The gentleman from Tennessee is a Member of the House of Representatives.

### ***Administration of the Oath Mid-Congress***

#### **§ 3.5 An authenticated fax of the original certificate of election has been accepted as sufficient documentation to permit the administration of the oath of office to a Member-elect, and unanimous consent is not required.<sup>(52)</sup>**

50. *Parliamentarian's Note:* If the certificate of election had arrived prior to the convening of the second session, the oath could have been administered prior to the quorum call (such action requiring neither unanimous consent nor a quorum). However, because the certificate of election had not arrived, unanimous consent was required to administer the oath, and such business is not in order prior to the establishment of a quorum. For an older contrary precedent, see 1 Hinds' Precedents § 176 (unanimous consent request to administer the oath entertained prior to the quorum call).

51. James Wright (TX).

52. For a discussion of when unanimous consent *is* required, see § 3.10, *infra*.

On July 25, 2007,<sup>(53)</sup> the following communications (supporting the administration of the oath of office to a Member-elect) were laid before the House:

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, July 24, 2007.*

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: I have the honor to transmit herewith a facsimile copy of a letter received from the Honorable Sonny Perdue, Governor, State of Georgia, indicating that, according to the official returns of the Special Election held July 17, 2007, the Honorable Paul Broun was elected Representative to Congress for the Tenth Congressional District, State of Georgia.

With best wishes, I am

Sincerely,

LORRAINE C. MILLER,  
*Clerk.*

STATE OF GEORGIA,  
OFFICE OF THE GOVERNOR,  
*Atlanta, GA, July 24, 2007.*

Hon. LORRAINE C. MILLER,  
*Clerk, House of Representatives,*  
*Washington, DC.*

DEAR MS. MILLER: This is to advise you that the Honorable Karen Handel, Secretary of State of Georgia, has certified the results of the Special Election held on Tuesday, July 17, 2007, for Representative in Congress from the Tenth Congressional District of Georgia. The results show that Paul C. Broun, Jr. received 23,529 or 50.42 percent of the total number of votes cast for that office. The Certification of Election is enclosed.

I have issued Dr. Broun's commission to serve as the Representative in Congress from Georgia's Tenth Congressional District of Georgia. There appears to be no contest to this election.

Sincerely,

SONNY PERDUE,  
*Governor.*

**53.** 153 CONG. REC. 20611, 110th Cong. 1st Sess. For similar examples, see, *e.g.*, 140 CONG. REC. 11980, 11981 (May 26, 1994); 143 CONG. REC. 5883, 5834 (Apr. 17, 1997); 145 CONG. REC. 11929 (June 8, 1999); 147 CONG. REC. 10105 (June 7, 2001); and 151 CONG. REC. 4178, 4239 (Mar. 10, 2005).

SWEARING IN OF THE HONORABLE PAUL C. BROUN, OF GEORGIA, AS A  
MEMBER OF THE HOUSE

The SPEAKER.<sup>(54)</sup> Will the Representative-elect and the Members of the Georgia delegation present themselves in the well.

Mr. BROUN appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations, you are now a Member of the 110th Congress.

**§ 3.6 An authenticated scanned image of the original certificate of election has been accepted as sufficient documentation to permit the administration of the oath of office to a Member-elect, and unanimous consent is not required.**<sup>(55)</sup>

On September 4, 2007,<sup>(56)</sup> the following communications (supporting the administration of the oath of office to a Member-elect) were laid before the House:

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

HOUSE OF REPRESENTATIVES,  
*Washington, DC, August 31, 2007.*

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: I have the honor to transmit herewith a scanned copy of a Certificate of Election received from the Honorable Debra Bowen, Secretary of State of California, indicating that, at the Special Election held on August 21, 2007, the Honorable Laura Richardson was duly elected Representative in Congress for the Thirty-Seventh Congressional District, State of California.

With best wishes, I am

Sincerely,

LORRAINE C. MILLER,  
*Clerk of the House.*

Enclosure.

CERTIFICATE OF ELECTION

I, Debra Bowen, Secretary of State of the State of California, hereby certify: That according to the official canvass of votes cast in the Special General Election held on the

**54.** Nancy Pelosi (CA).

**55.** *Parliamentarian's Note:* This was the first instance of an emailed scan of a certificate of election supporting the administration of the oath of office.

**56.** 153 CONG. REC. 23452, 23453, 110th Cong. 1st Sess.

21st day of August, 2007 in the 37th Congressional District, Laura Richardson was elected to the office of United States Representative, District 37 for the term prescribed by law.

SWEARING IN OF THE HONORABLE LAURA RICHARDSON, OF CALIFORNIA, AS  
A MEMBER OF THE HOUSE

The SPEAKER.<sup>(57)</sup> Will Representative-elect RICHARDSON and the Members of the California delegation present themselves in the well.

Ms. RICHARDSON appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now a Member of the 110th Congress.

*Authorizing the Administration of the Oath by Resolution*

**§ 3.7 The Committee on House Administration reported a privileged resolution authorizing the Speaker to administer the oath of office to a Member-elect and referring the question of final right to the seat to that committee for further investigation.**

On February 20, 1974,<sup>(58)</sup> the House adopted the following privileged resolution to administer the oath of office to John Murtha of Pennsylvania (whose certificate of election had not yet arrived due to a continuing vote recount mandated by state law):

AUTHORIZING THE SPEAKER TO ADMINISTER THE OATH OF OFFICE TO  
JOHN P. MURTHA

Mr. HAYS, from the Committee on House Administration, reported the following privileged resolution (H. Res. 871), Report No. 93-801, which was referred to the House Calendar and ordered to be printed. . . .

The Clerk read as follows:

H. RES. 871

*Resolved*, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Pennsylvania, John P. Murtha; and be it further

*Resolved*, That the question of the final right of John P. Murtha to a seat in the Ninety-third Congress be referred to the Committee on House Administration, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution.

**57.** Nancy Pelosi (CA).

**58.** 120 CONG. REC. 3516, 93d Cong. 2d Sess.

**§ 3.8 The House adopted a privileged resolution reported from the Committee on House Administration, to which the House had referred the question of final seating of two candidates (and pending which neither candidate had been temporarily seated), determining on the basis of a complete committee recount that one candidate (not the certified Member-elect) should be finally seated.**

On May 1, 1985,<sup>(59)</sup> the following privileged resolution resolving an election contest<sup>(60)</sup> was adopted:

RELATING TO ELECTION OF A REPRESENTATIVE FROM THE EIGHTH  
CONGRESSIONAL DISTRICT OF INDIANA

Mr. [Leon] PANETTA [of California]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 146) relating to election of a Representative from the Eighth Congressional District of Indiana, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 146

*Resolved*, That, based on a recount of votes in the election of November 6, 1984, conducted pursuant to House Resolution 1, Ninety-ninth Congress, agreed to January 3, 1985, the House of Representatives determines that Frank McCloskey was duly elected to the office of Representative from the Eighth Congressional District of Indiana and is entitled to a seat in the Ninety-ninth Congress.

Mr. [Joe] BARTON of Texas. Mr. Speaker, I raise a question of consideration and demand that the Chair put the question.

The SPEAKER pro tempore [Mr. [James] WRIGHT [of Texas]]. The question is, Will the House now consider House Resolution 146?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BARTON of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 242, nays 185, not voting 6, as follows:

[Roll No. 89] . . .

So the House agreed to consider House Resolution 146.

The result of the vote was announced as above recorded. . . .

- 59.** 131 CONG. REC. 9998, 9999, 10003, 10017–20, 99th Cong. 1st Sess. For more on election contests generally, see Deschler's Precedents Ch. 9 and Precedents (Wickham) Ch. 9. For challenging the right to be sworn, see § 4, *infra*. See also § 3.17, *infra*.
- 60.** *Parliamentarian's Note*: The election contest for Indiana's Eighth Congressional District involved a referral of the contest to the Committee on House Administration and a vote recount conducted by the committee. For the initial challenge to the right to be sworn (and subsequent committee referral), see § 4.1, *infra*. For more details on this contested election, see Precedents (Wickham) Ch. 9.

SWEARING IN OF THE HONORABLE FRANK McCLOSKEY OF INDIANA AS A  
MEMBER OF THE HOUSE

The SPEAKER. It is the intention at this particular time to have the Indiana delegation present to the House the elected candidate.

Mr. McCLOSKEY appeared at the bar of the House and took the oath of office.

The SPEAKER. The gentleman is a Member of the Congress of the United States.

**§ 3.9 Because state law required the Governor to “appoint” a Member-elect to a vacant seat, and such appointment was considered an election to such vacant seat (even though the vacancy was created after the date of election), the House adopted a privileged resolution authorizing the administration of the oath of office to the Member-elect with those credentials and referring the question of final right to the seat to the Committee on House Administration.<sup>(61)</sup>**

On November 29, 1994,<sup>(62)</sup> the following communications regarding an individual’s election to the 103d Congress were laid before the House, and a privileged resolution adopted permitting the individual to take the oath of office:

## RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The SPEAKER laid before the House the following resignation from the House of Representatives:

HOUSE OF REPRESENTATIVES,  
*Washington, DC, November 15, 1994.*

Hon. TOM FOLEY,

**61.** *Parliamentarian’s Note:* The House will generally defer to a state Governor’s interpretation of state law. 1 Hinds’ Precedents § 525. In this instance, Oklahoma law provided that if a vacancy in a congressional seat occurred after March 1 of an even-numbered year, the winner of the general election is to be “appointed” by the Governor to fill the remainder of the unexpired term. Here, the vacancy in the 103d Congress occurred on November 15, when Rep. James Inhofe resigned his seat for the First Congressional District of Oklahoma to serve in the Senate. At that time, Steve Largent had already been elected to that seat for the 104th Congress. Under the terms of the Oklahoma statute, the Governor was then required to “appoint” Mr. Largent to the fill the unexpired term for the 103d. The Governor interpreted the requirement to provide this “Order of Appointment” as a mere ministerial duty (since the Governor had no discretion to act otherwise) and thus that it should be treated as an election under Oklahoma law. The House, by adopting a resolution that permitted Member-elect Largent to be sworn, deferred to the Governor’s interpretation, in order to avoid a possible challenge that an “appointment” would violate article I, section 2, of the Constitution (providing that all Members be elected, not appointed) (*House Rules and Manual* § 5 (2017)). See also Deschler’s Precedents Ch. 37 § 5.1.

**62.** 140 CONG. REC. 29585, 29586, 103d Cong. 2d Sess.

*Speaker of the House, House of Representatives,  
Washington, DC.*

DEAR MR. SPEAKER: Attached is the letter I have sent to the Honorable David L. Walters, Governor of the State of Oklahoma, notifying him of my resignation from the House of Representatives effective today, November 15, 1994 at twelve midnight.

Sincerely,

JAMES M. INHOFE,  
*Member of Congress.*

Enclosure: letter.

HOUSE OF REPRESENTATIVES,  
*Washington, DC, November 15, 1994.*

Hon. DAVID WALTERS,  
*Governor, State of Oklahoma,  
Oklahoma City, OK.*

DEAR GOVERNOR WALTERS: Pursuant to the November 8, 1994 special election, at which time I was elected to serve the vacancy in the United States Senate created by the resignation of Senator David L. Boren, I hereby submit to you my letter of resignation effective twelve midnight, today, November 15, 1994.

Sincerely,

JAMES M. INHOFE,  
*Member of Congress.*

#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, November 22, 1994.*

Hon. THOMAS S. FOLEY,  
*The Speaker, House of Representatives,  
Washington, DC.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a certification from the Governor of Oklahoma, Honorable David Walters indicating that, Steve Largent of the First Congressional District, is elected to fill the vacancy in the 103d Congress created by the resignation of the Honorable James M. Inhofe at midnight on November 15, 1994.

This certification has been submitted under the laws of Oklahoma as stated in the accompanying documents. An election certification of Steve Largent to the 104th Congress has also been received in my office.

With great respect, I am

Sincerely yours,

DONNALD K. ANDERSON,  
*Clerk, House of Representatives.*

STATE OF OKLAHOMA,  
*November 17, 1994.*

Hon. DONNARD K. ANDERSON,  
*Clerk of the House of Representatives,*  
*Washington, DC.*

DEAR MR. ANDERSON: The provisions of 26 Okla. Stat., Section 12–101(B), require the election held November 8, 1994, for the seat to which Steve Largent was elected, be treated as election, within the meaning of Oklahoma law, to fill the vacancy of the unexpired term of James M. Inhofe, Member of Congress, who resigned effective November 15, 1994, at twelve midnight. Accordingly, pursuant to that statute, my appointment, as Governor of the State of Oklahoma, is the ministerial act incident to that election.

Sincerely,

DAVID WALTERS,  
*Governor.*

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ORDER OF APPOINTMENT

To: Secretary of State, Oklahoma State Capitol, Oklahoma City, Oklahoma

Please file for record the following executive order. By virtue of the authority vested in me as Governor of the State of Oklahoma, under 26 Okla. Stat., Section 12–101(B), I hereby appoint: Steve Largent, 124 E. 4th Street, Tulsa, Oklahoma 74103 as Member of the United States House of Representatives representing Oklahoma Congressional District 1, to serve the remainder of an unexpired term ending January 3, 1995. Mr. Largent will be succeeding the Honorable James Inhofe (resigned).

In witness whereof, I have hereunto set my hand and caused the seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma this 17th day of November 1994.

By the Governor of the State of Oklahoma: David Walters.

Attest: Glo Henley, Secretary of State.

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AUTHORIZING AND DIRECTING THE SPEAKER TO ADMINISTER THE OATH OF OFFICE TO MR. STEVE LARGENT OF OKLAHOMA

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, I offer a privileged resolution (H. Res. 585), and I ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 585

*Resolved*, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Oklahoma, Mr. Steve Largent.

*Resolved*, that the question of the final right of Mr. Steve Largent to a seat in the One Hundred Third Congress be referred to the Committee on House Administration.

The SPEAKER.<sup>(63)</sup> The gentleman from Illinois [Mr. MICHEL] is recognized for 1 hour.

Mr. MICHEL. Mr. Speaker, I shall not take the hour, but I offer this resolution to clarify the situation surrounding the seating of Congressman–elect STEVE LARGENT to the 103d Congress.

As my colleagues know, the gentleman from Oklahoma [Mr. INHOFE] won the special election to fill the vacant Senate seat from Oklahoma and has resigned from the House, thereby creating a vacancy.

---

63. Thomas Foley (WA).

Mr. Largent was elected on November 8 to represent the First District of Oklahoma. The credentials, forwarded from the State, include a letter from Governor Walters indicating that the provisions of Oklahoma law require that the November 8 election, "be treated as election within the meaning of Oklahoma law to fill the vacancy of the unexpired term of JAMES M. INHOFE." The Governor also forwarded an order of appointment for Mr. LARGENT to the 103d Congress as, "the ministerial act incident to that election," because the Governor, under Oklahoma law, has no discretion to act otherwise.

Let me cite from the relevant Oklahoma statute, 26 Oklahoma Statute, section 12-101, paragraph B:

No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of said office expires the following year. In such case, the candidate elected to said office at the regular General Election shall be appointed by the Governor to fill the unexpired term.

Now, Mr. Speaker, under article I, section 2, of the Constitution, when vacancies occur in the House the executive authority of the State shall issue writs of election to fill such vacancies. Members of the House must be elected, and not appointed, and if the Oklahoma law is construed as an appointment, it likely is unconstitutional. The House has, however, historically given great weight to a State's construction of its laws. This is the first time, as far as I am aware, that the statute has been applicable and, therefore, never came to our attention before.

I know of no objection to the seating of Mr. LARGENT. The Speaker and I have discussed this matter and believe the issue raises enough of a constitutional issue that it ought to be brought to the House's attention, but that we also should seat Mr. LARGENT. My resolution allows for the seating of Mr. LARGENT, but also directs the Committee of House Administration to review the issue for final determination, and I would urge the adoption of the resolution, Mr. Speaker.

Mr. [William] THOMAS of California. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. THOMAS of California. Mr. Speaker, I thank my leader for yielding, I think the point needs to be understood that Mr. LARGENT is being asked to be sworn in as a Member of the House of Representatives because the people in the First District of Oklahoma elected him, notwithstanding a Oklahoma law that says the Governor can appoint. The reason it is being referred to the Committee on House Administration is because in fact the Governor has forwarded the document which says that it was a ministerial duty to appoint him. This raises constitutional questions. Nevertheless the Oklahoma statute says the Governor can appoint.

Mr. Speaker, I am very pleased and proud to say the people of the First District of Oklahoma have sent us a new Congressman being sworn in today.

Mr. MICHEL. Mr. Speaker, I thank the distinguished gentleman from California [Mr. THOMAS] for his contribution, and again I urge adoption of the resolution.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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#### SWEARING IN OF THE HONORABLE STEVE LARGENT AS A MEMBER OF THE HOUSE OF REPRESENTATIVES

The SPEAKER. Will the Member-elect from Oklahoma, the Honorable STEVE LARGENT, please come forward?

Mr. LARGENT appeared at the bar of the House, and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter. So help you God.

The SPEAKER. Congratulations. You are now a Member of the House of Representatives.

***Authorizing the Administration of the Oath by Unanimous Consent***

**§ 3.10 The House by unanimous consent permitted a Member-elect to be sworn prior to the receipt of the official certificate of election, where no question or contest existed and the Clerk had received a scanned image of a letter from a state official conveying the unofficial returns of a special election.**

The proceedings of November 15, 2012,<sup>(64)</sup> typify the procedure by which the House by unanimous consent authorizes a Member-elect to take the oath of office where the certificate of election has not yet arrived:

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, November 8, 2012.*

Hon. JOHN BOEHNER,  
*The Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: I have the honor to transmit herewith a scanned copy of a letter received from The Honorable Kimberly M. Guadagno, Lieutenant Governor/Secretary of State, State of New Jersey, indicating that, according to the unofficial returns of the Special Election held November 6, 2012, the Honorable Donald M. Payne, Jr. was elected Representative to Congress for the Tenth Congressional District, State of New Jersey.

With best wishes, I am

Sincerely,

KAREN L. HAAS,  
*Clerk.*

Enclosure.

STATE OF NEW JERSEY,  
DEPARTMENT OF STATE,  
*Trenton, NJ, November 8, 2012.*

64. 158 CONG. REC. 15319, 112th Cong. 2d Sess.

Hon. KAREN L. HAAS,  
*Clerk, House of Representatives,*  
*The Capitol, Washington, DC.*

DEAR MS. HAAS: This is to advise you that the unofficial results of the Special Election held on Tuesday, November 6, 2012, for Representative in Congress from the Tenth Congressional District of New Jersey, show that Donald M. Payne, Jr. received 141,714 of the total number of voters cast for that office.

It would appear from these unofficial results that Donald M. Payne, Jr. was elected as Representative in Congress from the Tenth Congressional District of New Jersey.

To the best of our knowledge and belief at this time, there is no contest to this election.

As soon as the official results are certified, to this office by the Essex, Hudson and Union County Clerks involved, an official Certificate of Election will be prepared for transmittal as required by law.

Sincerely,

KIMBERLY M. GUADAGNO,  
*Lieutenant Governor /*  
*Secretary of State.*

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SWEARING IN OF THE HONORABLE DONALD M. PAYNE, JR., OF NEW JERSEY,  
 AS A MEMBER OF THE HOUSE

Mr. [Christopher] SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that the gentleman from New Jersey, the Honorable DONALD M. PAYNE, Jr., be permitted to take the oath of office today.

His certificate of election has not arrived, but there is no contest and no question has been raised with regard to his election.

The SPEAKER.<sup>(65)</sup> Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER. Will Representative-elect PAYNE and the members of the New Jersey delegation present themselves in the well.

All Members will rise and the Representative-elect will please raise his right hand.

Mr. PAYNE appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations, you are now a Member of the 112th Congress.

**§ 3.11 The Chair may take under advisement a parliamentary inquiry regarding recognition for a unanimous-consent request to permit a Member-elect to take the oath of office, notwithstanding the fact that the certificate of election had not yet arrived.**

<sup>65</sup>. John Boehner (OH).

On May 26, 1993,<sup>(66)</sup> the Chair responded to a parliamentary inquiry regarding the right of a Member–elect to take the oath of office as follows:

PARLIAMENTARY INQUIRY

Mr. [Frank] SENSENBRENNER [of Wisconsin]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. [James] McDERMOTT [of Washington]). The gentleman will state it.

Mr. SENSENBRENNER. Mr. Speaker, would it be in order for me to ask unanimous consent that the gentleman from Wisconsin [Mr. BARCA] who has been elected to fill the vacant First District seat, be allowed to take the oath of office, notwithstanding the fact that a certificate of election for him has not arrived? The Republican candidate has conceded and, to my knowledge, there is no objection to Mr. BARCA taking the oath of office from this side of the aisle.

The SPEAKER pro tempore. The Chair would have to take that under advisement with the Speaker of the House.

*Administration of the Oath by a Speaker Pro Tempore*

**§ 3.12 An elected Speaker pro tempore may administer the oath of office to a Member–elect.**

On March 17, 1998,<sup>(67)</sup> the following communications were laid before the House (allowing the administration of the oath of office to a Member–elect by the Speaker pro tempore):<sup>(68)</sup>

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore (Mr. [Richard] ARMEY [of Texas]) laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, March 17, 1998.

Hon. NEWT GINGRICH,  
*The Speaker, House of Representatives,*  
Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of the original Certificate of Election received from the Honorable Bill Jones, Secretary of State, State of

66. 139 CONG. REC. 11251, 103d Cong. 1st Sess.

67. 144 CONG. REC. 3835, 3836, 105th Cong. 2d Sess.

68. *Parliamentarian's Note*: An elected Speaker pro tempore exercises virtually all of the same authorities as the Speaker. As such, unanimous consent is not required to allow an elected Speaker pro tempore to administer the oath of office to a Member–elect. An appointed Speaker pro tempore, by contrast, cannot administer the oath of office absent unanimous consent. For more on the distinction between elected and appointed Speakers pro tempore, see Deschler's Precedents Ch. 6 §§ 12–14 and Precedents (Wickham) Ch. 6.

California, indicating that, according to the semi-official canvass of votes cast in the Special Election held March 10, 1998, the Honorable Lois Capps was elected Representative in Congress for the Twenty-second Congressional District, State of California.

With warm regards,

ROBIN H. CARLE,  
*Clerk.*

STATE OF CALIFORNIA—SECRETARY OF STATE

CERTIFICATE OF ELECTION

I, Bill Jones, the Secretary of State of the State of California, hereby certify:

That according to the semi-official canvass of votes cast in the Special Election held on the 10th day of March, 1998 in the 22d Congressional District,

Lois Capps was elected to the office of United States Representative—District 22, for the term prescribed by law.

In witness whereof, I hereunto set my hand and affix the Great Seal of the State of California at Sacramento, this 11th day of March 1998.

BILL JONES,  
*Secretary of State.*

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SWEARING IN OF THE HONORABLE LOIS CAPPS, OF CALIFORNIA, AS A  
MEMBER OF THE HOUSE

The SPEAKER pro tempore. Will the Members of the California delegation escort the gentlewoman from California, the Member-elect, to the rostrum to receive the oath of office.

Mrs. CAPPS appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely and without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter. So help you God?

The SPEAKER pro tempore. Congratulations, you are now a Member of the Congress of the United States.

***Deputizing Others to Administer the Oath***

**§ 3.13 The House may adopt privileged resolutions authorizing the Speaker or a deputy to administer the oath of office to named Members-elect convalescing in their districts, following which the Speaker pro tempore may deputize Federal judges to administer the oaths.**

On January 7, 2015,<sup>(69)</sup> the following occurred;

**69.** 161 CONG. REC. H95 [Daily Ed.], 114th Cong. 1st Sess. See also *e.g.*, 145 CONG. REC. 246, 106th Cong. 1st Sess. (Jan. 6, 1999) (deputizing state judge).

## AUTHORIZING THE SPEAKER TO ADMINISTER THE OATH OF OFFICE

Ms. [Virginia] FOXX [of North Carolina]. Mr. Speaker, I offer a privileged resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

## H. RES. 20

*Resolved*, Whereas, Alan Nunnelee, a Representative-elect from the First District of the State of Mississippi, has been unable from illness to appear in person to be sworn as a Member of the House, and there being no contest or question as to his election; Now, therefore, be it

*Resolved*, That the Speaker, or deputy named by him, is hereby authorized to administer the oath of office to the Honorable Alan Nunnelee at Tupelo, Mississippi and that such oath be accepted and received by the House as the oath of office of the Honorable Alan Nunnelee.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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 APPOINTMENT OF HON. MICHAEL MILLS TO ADMINISTER OATH OF OFFICE  
TO HON. ALAN NUNNELEE

The SPEAKER pro tempore.<sup>(70)</sup> Pursuant to the provisions of House Resolution 20, 114th Congress, the Chair appoints the Honorable Judge Michael Mills of the Northern District of Mississippi, United States District Court, to administer the oath of office to the Honorable ALAN NUNNELEE.

**§ 3.14 When the Speaker is authorized to deputize an individual to administer the oath of office to a Member-elect, the Speaker lays before the House communications from such individual confirming that the oath was administered.**

On January 19, 1999,<sup>(71)</sup> the following correspondence was laid before the House for the information of Members:

## COMMUNICATION FROM THE HONORABLE ELLEN SICKLES JAMES

The SPEAKER laid before the House the following communication from the Honorable Ellen Sickles James:

*Martinez, CA, January 7, 1999.*

Hon. J. DENNIS HASTERT,  
*Speaker, U.S. House of Representatives,  
The Capitol, Washington, DC.*

DEAR MR. SPEAKER: On January 6, 1999 you designated me to administer the oath of office to Representative-elect George Miller of the Seventh District of the State of California under House Resolution 12, One Hundred Sixth Congress.

<sup>70</sup>. Ted Poe (TX).

<sup>71</sup>. 145 CONG. REC. 602, 106th Cong. 1st Sess.

Under such designation, I have the honor to report that on January 7, 1999 at Martinez I administered the oath of office to Mr. Miller. Mr. Miller took the oath prescribed by 5 U.S.C. 3331. I have sent two copies of the oath, signed by Mr. Miller, to the Clerk of the House.

Sincerely,

Judge ELLEN SICKLES JAMES, Ret.

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COMMUNICATION FROM THE HONORABLE MARC B. POCHÉ

The SPEAKER laid before the House the following communication from the Honorable Marc B. Poché:

COURT OF APPEAL,  
*San Francisco, CA, January 8, 1999.*

Hon. J. DENNIS HASTERT,  
*Speaker, U.S. House of Representatives,*  
*The Capitol, Washington, DC.*

DEAR MR. SPEAKER: On January 6, 1999, you designated me to administer the oath of office to Representative-elect Sam Farr of the Seventeenth District of the State of California under House Resolution 13, One Hundred Sixth Congress.

Under such designation, I have the honor to report that on January 8, 1999, at Carmel, California, I administered the oath of office to Mr. Farr. Mr. Farr took the oath prescribed by 5 U.S.C. section 3331. I have sent two copies of the oath, signed by Mr. Farr, to the Clerk of the House.

Sincerely,

MARC B. POCHÉ.

**§ 3.15 The House adopted a privileged resolution formally accepting the oath of office administered by a state judge who had been deputized to administer the oath, following confirmation that the Member-elect had been sworn.**

On January 15, 1973,<sup>(72)</sup> following confirmation that the oath of office had been administered to a Member-elect by a state judge appointed by the Speaker, the House adopted a privileged resolution formally accepting<sup>(73)</sup> said oath:

The SPEAKER laid before the House the following communication:

PORTLAND, OREG.,  
*January 8, 1973.*

**72.** 119 CONG. REC. 1054-55, 93d Cong. 1st Sess.

**73.** *Parliamentarian's Note:* This resolution was arguably unnecessary, as the resolution authorizing the Speaker to deputize another to administer the oath (House Resolution 11) already contained language to the effect that the oath (when administered) "be accepted and received by the House." No similar resolution has been adopted since the 93d Congress.

Hon. CARL ALBERT,  
*Speaker, House of Representatives,*  
*Washington, D.C.*

SIR: In accordance with your designation of me, pursuant to House Resolution 11, Ninety-third Congress, adopted by the House of Representatives, to administer the oath of office to Representative-elect Edith Green of the Third District of Oregon, I have the honor to report that on the 3d day of January, 1973, at Multnomah County, State of Oregon, I administered the oath of office to Mrs. Edith Green, form prescribed by section 1757 of the Revised Statutes of the United States, being the form of oath administered to Members of the House of Representatives, to which Mrs. Green subscribed.

I have the honor to be,

Yours respectfully,

JOHN C. BEATTY, JR.

Mr. [Albert] ULLMAN [of Oregon]. Mr. Speaker, I offer a privileged resolution (H. Res. 129) and ask for its immediate consideration.

The clerk read the resolution as follows:

H. RES. 129

Whereas Edith Green, a Representative from the State of Oregon, from the Third District thereof, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed to the oath of office before the Honorable John C. Beatty, Jr., Judge, Circuit Court of Oregon, Fourth Judicial District, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in her behalf to the House, and there being no contest or question as to her election: Therefore be it

*Resolved*, That the said oath be accepted and received by the House as the oath of office of the said Edith Green as a Member of this House.

The resolution was agreed to.

A motion to reconsider was laid on the table.

### ***Privilege and Precedence***

#### **§ 3.16 The Speaker may interrupt a call of the House ordered pursuant to clause 6(e)(2) of rule XV (now clause 7(b) of rule XX),<sup>(74)</sup> to administer the oath of office to a Member-elect.<sup>(75)</sup>**

On January 22, 1981, a Member-elect was administered the oath of office during a call of the House as follows:<sup>(76)</sup>

**74.** *House Rules and Manual* § 1028 (2017).

**75.** *Parliamentarian's Note*: Under former clause 6(a)(2) of rule XV, a point of order of no quorum was not in order during the administration of the oath, and under the precedents, the oath may be administered even in the absence of a quorum (1 Hinds' Precedents § 170; 6 Cannon's Precedents §§ 21, 22). However, in the 106th Congress, the specific exceptions from the normal quorum requirements were eliminated in favor of a clarification of the proscription against entertaining points of no quorum where no question has been put before the House. Thus, during a motion for a call of the House, whether or not a quorum has yet responded, the oath may be administered to a Member-elect.

**76.** 127 CONG. REC. 693, 97th Cong. 1st Sess.; *House Rules and Manual* §§ 200, 204 (2017).

## CALL OF THE HOUSE

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I move a call of the House.  
A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 6] . . .

## SWEARING IN OF MEMBER-ELECT

The SPEAKER<sup>(77)</sup> (during the call of the House). Will the gentleman from Pennsylvania (Mr. ERTEL) present himself in the well of the House for the purpose of taking the oath of office?

Mr. ERTEL appeared at the bar of the House and took the oath of office.

**§ 3.17 If a Member-elect whose right to a seat has been determined by the House is present to take the oath, the right to be sworn cannot be deferred even by a motion to adjourn,<sup>(78)</sup> but the Speaker has entertained the motion to adjourn after adoption of a seating resolution.<sup>(79)</sup>**

On May 1, 1985,<sup>(80)</sup> the following occurred:

## RELATING TO ELECTION OF A REPRESENTATIVE FROM THE EIGHTH CONGRESSIONAL DISTRICT OF INDIANA

Mr. [Leon] PANETTA [of California]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 146) relating to election of a Representative from the Eighth Congressional District of Indiana, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 146

*Resolved*, That, based on a recount of votes in the election of November 6, 1984, conducted pursuant to House Resolution 1, Ninety-ninth Congress, agreed to January 3, 1985, the House of Representatives determines that Frank McCloskey was duly elected to the office of Representative from the Eighth Congressional District of Indiana and is entitled to a seat in the Ninety-ninth Congress. . . .

Mr. Speaker, I move the previous question on the resolution.

77. Thomas O'Neill (MA).

78. 1 Hinds' Precedents § 622.

79. *Parliamentarian's Note*: In this instance, the Member-elect was not present in the Chamber at the time the motion to adjourn was offered. Thus, the Chair entertained a motion to adjourn between the adoption of the resolution authorizing the administration of the oath and the appearance of the Member-elect in the Chamber.

80. 131 CONG. REC. 9998, 9999, 10003, 10017-20, 99th Cong. 1st Sess. See also § 3.17, *supra*.

## MOTION TO RECOMMIT OFFERED BY MR. FRENZEL

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I offer a motion to recommit with instructions.

The SPEAKER pro tempore.<sup>(81)</sup> Is the gentleman opposed to the resolution?

Mr. FRENZEL. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. FRENZEL moves to recommit H. Res. 146 to the Committee on House Administration with instructions that the Committee be directed to count the otherwise valid unnotorized absentee ballots identified by the Task Force on the Indiana Eighth Congressional District in Orange, Lawrence, Daviess and Greene Counties and when that count is completed the Committee will certify the winner and report their findings immediately to the House.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 183, nays 246, not voting 4, as follows:

[Roll No. 90] . . .

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MOTION TO ADJOURN

The SPEAKER.<sup>(82)</sup> For what purpose does the gentleman from Illinois Mr. MICHEL rise?

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, in view of that vote, the last vote, I move that we adjourn.

The SPEAKER. Would the gentleman withhold until the Chair has had an opportunity to swear in Mr. McCloskey?

Mr. MICHEL. No, Mr. Speaker. Our purpose is to adjourn immediately in keeping with the precedent of the Democratic Party back in 1890.

The SPEAKER. The gentleman appreciates the fact that the motion is not debatable.

Mr. MICHEL. I understand, Mr. Speaker.

The SPEAKER. The question is on the motion to adjourn offered by the gentleman from Illinois [Mr. MICHEL].

The question was taken; and the Speaker announced that the noes appeared to have it.

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81. James Wright (TX).

82. Thomas O'Neill (MA).

Mr. MICHEL. Mr. Speaker, on that I demand the yeas and nays.  
The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 179, nays 248, not voting 6, as follows:

[Roll No. 92] . . .

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SWEARING IN OF THE HONORABLE FRANK McCLOSKEY OF INDIANA AS A  
MEMBER OF THE HOUSE

The SPEAKER. It is the intention at this particular time to have the Indiana delegation present to the House the elected candidate.

Mr. McCLOSKEY appeared at the bar of the House and took the oath of office.

The SPEAKER. The gentleman is a Member of the Congress of the United States.

**§ 3.18 The oath of office may be administered to Members–elect during a vote by electronic device.**<sup>(83)</sup>

On January 4, 2007,<sup>(84)</sup> during an electronic vote, the Speaker administered the oath of office to Members–elect as follows:

SWEARING IN OF MEMBERS–ELECT

The SPEAKER (during the vote).<sup>(85)</sup> Will the gentleman from Texas (Mr. GOHMERT), the gentleman from Kansas (Mr. MORAN), and the gentleman from Michigan (Mr. ROGERS) kindly come to the well of the House and take the oath of office.

Messrs. GOHMERT, MORAN of Kansas, and Rogers of Michigan appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will, well and faithfully, discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations.

**§ 3.19 A Member–elect was permitted to take the oath of office pending the question of engrossment and third reading of a bill where the previous question was ordered to final passage without intervening motion, except one motion to recommit.**<sup>(86)</sup>

<sup>83</sup>. See 1 Hinds' Precedents § 173 and 6 Cannon's Precedents § 22.

<sup>84</sup>. 153 CONG. REC. 17, 18, 110th Cong. 1st Sess. See also 145 CONG. REC. 233–35, 106th Cong. 1st Sess (Jan. 6, 1999) and 151 CONG. REC. 749, 109th Cong. 1st Sess. (Jan. 25, 2005).

<sup>85</sup>. Nancy Pelosi (CA).

<sup>86</sup>. *Parliamentarian's Note*: The Speaker has also administered the oath of office to a Member–elect between the question of engrossment and third reading and the vote on final

On June 19, 2008,<sup>(87)</sup> the following occurred:

So the amendment was agreed to.

The result of the vote was announced as above recorded.

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COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, June 18, 2008.*

Hon. NANCY PELOSI,  
*The Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: I have the honor to transmit herewith a scanned copy of a letter received from Ms. Linda H. Lamone, Administrator, Maryland State Board of Elections, indicating that, according to the unofficial returns of the Special Election held June 17, 2008, the Honorable Donna Edwards was elected Representative to Congress for the Fourth Congressional District, State of Maryland.

With best wishes, I am

Sincerely,

LORRAINE C. MILLER,  
*Clerk.*

Enclosure.

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MARYLAND  
STATE BOARD OF ELECTIONS,  
*Annapolis, MD, June 18, 2008.*

Hon. LORRAINE C. MILLER  
*Clerk, House of Representatives,*  
*The Capitol, Washington, DC.*

DEAR MS. MILLER: This letter is to advise you that the unofficial results of the Special Election held on Tuesday, June 17, 2008, for Representative in Congress from the Fourth Congressional District of Maryland show that Donna Edwards received 15,381 votes or 80 percent of the total number of votes cast for that office on election day excluding absentee and provisional ballots.

It would appear from these unofficial results that Donna Edwards will be certified as the Representative in Congress from Fourth Congressional District of Maryland.

As of the date of this letter, there is no contest to this election.

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passage, where the previous question was operating pursuant to a special order of business, but where the Speaker had postponed proceedings under clause 1(c) of rule XIX. See *House Rules and Manual* § 1000a (2017). See 158 CONG. REC. 1081, 112th Cong. 2d Sess. (Feb. 7, 2012).

**87.** 154 CONG. REC. 13047–49, 110th Cong. 2d Sess.

As soon as the official results are certified, an official Certificate of Election will be prepared for transmittal as required by law.

Sincerely,

LINDA H. LAMONE,  
*Administrator.*

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SWEARING IN OF THE HONORABLE DONNA EDWARDS, OF MARYLAND, AS A  
MEMBER OF THE HOUSE

Mr. [Steny] HOYER [of Maryland]. Madam Speaker, I ask unanimous consent that the gentlewoman from Maryland, the Honorable DONNA EDWARDS, be permitted to take the oath of office today.

Her certificate of election has not arrived, but there is no contest and no question has been raised with regard to her election.

The SPEAKER.<sup>(88)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection.

The SPEAKER. Will Representative-elect EDWARDS and the members of the Maryland delegation present themselves in the well.

Ms. EDWARDS of Maryland appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now a Member of the 110th Congress.

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ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Under clause 5(d) of rule XX, the Chair announces to the House that, in light of the administration of the oath of office to the gentlewoman from Maryland (Ms. EDWARDS), the whole number of the House is 435.

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FEDERAL EMPLOYEES PAID PARENTAL LEAVE ACT OF 2008

The SPEAKER pro tempore (Mr. [Earl] BLUMENAUER [of Oregon]). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

**§ 3.20 The oath of office may be administered to Members-elect pending consideration of the resolution adopting the standing**

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88. Nancy Pelosi (CA).

**rules of the House or during a recorded vote on the question of consideration of that resolution.**

On January 4, 2005,<sup>(89)</sup> a Member raised a question of consideration with regard to the resolution adopting the standing rules. During debate on the question (and subsequently during the vote on the question), Members–elect were administered the oath of office as follows:

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER.<sup>(90)</sup> Before the gentleman proceeds, the Chair would like to announce that any Member–elect who failed to take the oath of office may present himself or herself in the well of the House prior to any vote.

SWEARING IN OF MEMBERS–ELECT

The SPEAKER. Will the gentlewoman from New York (Ms. SLAUGHTER), the gentlewoman from New York (Mrs. MALONEY) and the gentlewoman from Florida (Ms. CORRINE BROWN), kindly come to the well of the House and take the oath of office at this time.

Ms. SLAUGHTER, Mrs. MALONEY and Ms. CORRINE BROWN of Florida appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office upon which you are about to enter. So help you God. . . .

Mr. [Brian] BAIRD [of Washington]. Mr. Speaker, consistent with the oath of office that I just took, I would request that the question of consideration be put to the body.

The SPEAKER. The question is, Will the House now consider House Resolution 5.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAIRD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER. Without objection, this will be an electronic vote on the question of consideration.

There was no objection.

The vote was taken by electronic device, and there were—yeas 224, nays 192, answered “present” 1, not voting 11, as follows:

[Roll No. 3]. . .

SWEARING IN OF MEMBER–ELECT

The SPEAKER (during the vote). Will the gentleman from California (Mr. COX) kindly come to the well of the House and take the oath of office at this time.

Mr. COX appeared at the bar of the House and took the oath of office, as follows:

**89.** 151 CONG. REC. 46, 47, 109th Cong. 1st Sess.

**90.** Dennis Hastert (IL).

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office upon which you are about to enter, so help you God.

**§ 3.21 Where the two Houses divide to consider an objection to the counting of certain electoral votes for President and Vice President, the oath of office may be administered in the separate House session to a Member-elect during an electronic vote on the question of agreeing to said objection.**

On January 6, 2005,<sup>(91)</sup> the House and Senate met in joint session to count the electoral votes for President and Vice President.<sup>(92)</sup> An objection was made to the counting of certain electoral votes, and, pursuant to law,<sup>(93)</sup> the Houses divided into separate sessions to consider the objection. During the separate House session, the oath of office was administered to a Member-elect during the vote on agreeing to the objection as follows:

The SPEAKER.<sup>(94)</sup> Pursuant to Senate Concurrent Resolution 1 and section 17 of title 3, the United States Code, when two Houses withdraw from the joint session to count the electoral vote for separate consideration of objection, a Representative may speak to the objection for 5 minutes and not more than once. Debate shall not exceed 2 hours, after which the Chair will put the question, “Shall the objection be agreed to?”

The Clerk will report the objection made in the joint session.

The Clerk read the objection as follows:

We, a Member of the House of Representatives and a United States Senator, object to the counting of the electoral votes of the State of Ohio on the ground that they were not, under all of the known circumstances, regularly given.

STEPHANIE TUBBS JONES,  
*Representative, State of Ohio.*

BARBARA Boxer,  
*Senator, State of California.*

The SPEAKER. The Chair will endeavor to alternate recognition between Members speaking in support of the objection and Members speaking in opposition to the objection.

The Chair recognizes the gentlewoman from Ohio (Mrs. JONES) for 5 minutes.

Mrs. [Stephanie Tubbs] JONES of Ohio. Mr. Speaker, I, STEPHANIE TUBBS JONES, and BARBARA BOXER, a Senator from California, have objected to the counting of the electoral

91. 151 CONG. REC. 199, 242, 243, 109th Cong. 1st Sess.

92. For more on the joint session to count electoral votes, see Deschler’s Precedents Ch. 10 and Precedents (Wickham) Ch. 10.

93. 3 U.S.C. § 15.

94. Dennis Hastert (IL).

votes of the State of Ohio on the ground that they were not, under all of the known circumstances, regularly given.

I, thank God, have a Senator joining me in this objection, and I appreciate Senator BOXER's willingness to listen to the plight of hundreds, and even thousands of Ohio voters, that for a variety of reasons were denied the right to vote. . . .

The SPEAKER. In the tradition of the House, the gentleman from Texas will be heard for such time as he may consume. . . .

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#### SWEARING IN OF MEMBER-ELECT

The SPEAKER (during the vote). Will the gentleman from Georgia (Mr. NORWOOD) please come to the well of the House and take the oath of office at this time.

Mr. NORWOOD appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you will take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office upon which you are about to enter, so help you God.

#### § 3.22 The administration of the oath to a Member-elect may interrupt the call of the roll of committees on Calendar Wednesday.<sup>(95)</sup>

On May 7, 2008,<sup>(96)</sup> the following proceedings occurred during Calendar Wednesday:

##### CALENDAR WEDNESDAY

The SPEAKER pro tempore.<sup>(97)</sup> Today is the day of Calendar Wednesday. The Clerk will call the roll of committees.

The Clerk called the committees. . . .

##### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

- 95.** *Parliamentarian's Note:* Calendar Wednesday procedures were used in prior Congresses to expedite consideration of nonprivileged measures reported by committees and the administration of the oath of office was one of the few items of business that could interrupt the call of committees under the rule. Clause 6 of rule XV was amended in the 110th Congress to eliminate the automatic call of committees and instead impose a notification requirement (absent which the call does not occur). As such, Calendar Wednesday procedures are rarely used in modern practice. See *House Rules and Manual* § 900 (2017). For more on Calendar Wednesday, see Deschler's Precedents Ch. 21 § 4 and Precedents (Wickham) Ch. 21.
- 96.** 154 CONG. REC. 7993, 7997, 7998, 8001, 110th Cong. 2d Sess. See also 6 Cannon's Precedents § 22.
- 97.** Michael McNulty (NY).

Hon. NANCY PELOSI,  
*The Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: I have the honor to transmit herewith a facsimile copy of a letter received from the Honorable Jay Dardenne, Secretary of State, State of Louisiana, indicating that, according to the unofficial returns of the Special Election held May 3, 2008, the Honorable STEVE SCALISE was elected Representative to Congress for the First Congressional District, State of Louisiana.

With best wishes, I am

Sincerely,

LORRAINE C. MILLER,  
*Clerk.*

Enclosure.

Hon. LORRAINE C. MILLER,  
*Clerk, House of Representatives,*  
*The Capitol, Washington, DC.*

DEAR MS. MILLER: This is to advise you that the unofficial results of the Special Election held on Saturday, May 3, 2008, for Representative in Congress from the First Congressional District of Louisiana, show that "STEVE" SCALISE received 33,867 or 75.13% of the total number of votes cast for that office.

It would appear from these unofficial results that "STEVE" SCALISE was elected as Representative in Congress from the First Congressional District of Louisiana.

To the best of our knowledge and belief at this time, there is no contest to this election.

As soon as the official results are certified to this office by all Parishes involved, an official Certificate of Election will be prepared for transmittal as required by law.

If I can ever be of any assistance to you, please do not hesitate contacting me.

With best wishes,

JAY DARDENNE,  
*Secretary of State, State of Louisiana . . .*

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SWEARING IN OF THE HONORABLE STEVE SCALISE, OF LOUISIANA, AS A  
 MEMBER OF THE HOUSE

Mr. [James] McCRERY [of Louisiana]. Madam Speaker, I ask unanimous consent that the gentleman from Louisiana, the Honorable Steve Scalise, be permitted to take the oath of office today.

His certificate of election has not arrived, but there is no contest and no question has been raised with regard to his election.

The SPEAKER.<sup>(98)</sup> Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The SPEAKER. Will the Representative-elect and the members of the Louisiana delegation present themselves in the well.

<sup>98</sup>. Nancy Pelosi (CA).

Mr. SCALISE appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now a Member of the 110th Congress.

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#### ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Under clause 5(d) of rule XX, the Chair announces to the House that, in light of the administration of the oath to the gentleman from Louisiana, the whole number of the House is 434. . . .

#### CALENDAR WEDNESDAY—CONTINUED

The SPEAKER pro tempore (Mr. [Earl] POMEROY [of North Dakota]). The Clerk will resume the call of the roll of committees.

The Clerk called the committees.

### § 4. Challenging the Right to be Sworn

When the Speaker directs Members–elect to take the oath of office *en masse*, any Member–elect may challenge the right of another Member–elect to be sworn.<sup>(1)</sup> This authority derives from the Constitution, which provides that “Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members.”<sup>(2)</sup> The challenging Member–elect must base the challenge on either specific information or on his or her own responsibility as a Member–elect.<sup>(3)</sup> A challenge may be directed at an individual Member–elect, or at an entire state delegation.<sup>(4)</sup>

When a challenge is made, the Speaker requests that the challenged Member(s)–elect not rise to take the oath with the rest of the membership. The Speaker does not rule on the challenge but awaits a decision of the

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1. See, *e.g.*, Deschler’s Precedents Ch. 2 § 6.1.
  2. U.S. Const. art. I, § 5, cl. 1; *House Rules and Manual* § 46 (2017).
  3. See Deschler’s Precedents Ch. 2 § 6.2. If the Member–elect does not state a sufficient basis for the challenge, the House may decline to entertain it. See 1 Hinds’ Precedents § 455.
  4. See, *e.g.*, Deschler’s Precedents Ch. 2 §§ 6.4, 6.5. Instances of challenges being made to entire state delegations are found primarily in the Civil War–era, where the issue was the status of the constituency rather than the qualifications or elections of the individual Members. See 1 Hinds’ Precedents §§ 457, 460–462.

House as to whether the challenged Member(s)–elect may take the oath. A challenged Member–elect does not lose any rights or privileges as a Member–elect.<sup>(5)</sup> A challenged Member–elect may be permitted to debate the issue of the right to the seat.<sup>(6)</sup> Challenged cases are taken up in the order in which the challenges are made.<sup>(7)</sup> While resolutions addressing the right of a Member–elect to be sworn are privileged,<sup>(8)</sup> the House may complete other organizational business first,<sup>(9)</sup> or proceed to legislative business by unanimous consent.<sup>(10)</sup>

The House typically resolves a challenge to seating a Member–elect by one of three methods. The House may simply choose to authorize the administration of the oath to the challenged Member–elect (by privileged resolution), determining both the prima facie and final right to the seat.<sup>(11)</sup> Alternatively, the House may only determine the prima facie right to the seat and adopt a resolution authorizing the administration of the oath, but referring the question of the final right to the seat to a committee.<sup>(12)</sup> Finally, the House may choose not to permit the administration of the oath to the Member–elect, but instead refer the issues of both the prima facie and final right to the seat to committee.<sup>(13)</sup> A variety of factors determine which type of resolution the House will adopt, including the grounds for the challenge and the sufficiency of the evidence presented. If the House determines that a Member–elect should not be seated, and that individual is reelected to that same Congress (or a subsequent Congress), a new challenge must be made when such individual appears to take the oath.<sup>(14)</sup>

In 1969, Congress passed the Federal Contested Elections Act<sup>(15)</sup> which set forth procedures for resolving election contests in the House.<sup>(16)</sup> The filing of a “notice of contest” under the statute by a contestant confers jurisdiction on the Committee on House Administration to investigate the case

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5. For more on the status of Members–elect versus full Members, see § 1, *supra*.
  6. Debate will generally not be permitted until the remaining Members–elect have been sworn. See Deschler’s Precedents Ch. 2 § 6.3. For floor privileges of contestants and contestees in election cases, see Deschler’s Precedents Ch. 4 § 4.5 and Precedents (Wickham) Ch. 4 § 5.
  7. See 1 Hinds’ Precedents §§ 147, 148.
  8. *House Rules and Manual* § 201 (2017).
  9. See 1 Hinds’ Precedents § 474.
  10. See 1 Hinds’ Precedents §§ 151, 152.
  11. See Deschler’s Precedents Ch. 2 § 6.5.
  12. See 1 Hinds’ Precedents § 544. The committee with jurisdiction over contested elections (and Federal elections generally) is the Committee on House Administration. Rule X, clause 1(k)(12), *House Rules and Manual* § 724 (2017).
  13. See, *e.g.*, § 4.1, *infra*.
  14. See Deschler’s Precedents Ch. 2 §§ 6.7–6.9.
  15. P.L. 91–138, 83 Stat. 284, as amended by P.L. 104–186, 110 Stat. 1718, codified at 2 U.S.C. §§ 381–396.
  16. For election contests generally, see Deschler’s Precedents Ch. 9 and Precedents (Wickham) Ch. 9.

and recommend a course of action to the full House. No further action of the House is necessary to begin that process. It is rare for a Member-elect to formally challenge the administration of the oath to another Member-elect based merely on the filing of a notice under the statute.<sup>(17)</sup> Rather, the House generally allows the investigation to proceed under the statute and awaits the recommendation of the committee. By seating a contestee under such circumstances, the House makes the initial determination that the individual has a prima facie right to the seat, but makes no such determination as to the final right to the seat.<sup>(18)</sup>

Since the advent of these statutory mechanisms for challenging the right of a Member-elect to be seated, there have been relatively few occasions in which a Member-elect took the initiative to offer a challenge on the floor. In 1985, a challenge was made to the seating of Richard McIntyre of Indiana, and the issue of the prima facie and final right to the seat was referred to the Committee on House Administration.<sup>(19)</sup> Also in 1985, a challenge was made to the seating of Richard Stallings of Idaho, but a resolution was adopted authorizing the Speaker to administer the oath.<sup>(20)</sup> A notice of a contested election had been filed in the case, and so there was no need for the House to refer the issue of the final right to the seat to committee.

**§ 4.1 Where a candidate's certificate of election was contradicted by extrinsic evidence of irregularities in state certification of recount procedures (although not by documents from state election officials), the Speaker requested the challenged Member-elect to remain seated while other Members-elect were administered the oath of office, following which the House adopted a resolution declaring that neither candidate was to be sworn, and that the question of the right to the seat be referred to the Committee on House Administration.**

On January 3, 1985,<sup>(21)</sup> the following occurred:

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#### SWEARING IN OF MEMBERS

The SPEAKER.<sup>(22)</sup> According to the precedents, the Chair will swear in all Members of the House at this time.

17. For parliamentary inquiries on this issue, see § 2.3, *supra*.

18. *Id.*

19. See § 4.2, *infra*. Following the committee investigation, the House eventually seated the contestee in that case, Frank McCloskey. See § 3.8, *supra*.

20. See § 4.1, *infra*.

21. 131 CONG. REC. 380-382, 386-387, 99th Cong. 1st Sess.

22. Thomas O'Neill (MA).

The Chair recognizes the gentleman from Texas [Mr. WRIGHT].

Mr. [James] WRIGHT. Mr. Speaker, upon my responsibility as a Member-elect of the 99th Congress, I object to the oath being administered to the gentleman from Indiana, Mr. McIntyre, and I base this upon facts and statements which I consider to be reliable.

The SPEAKER. Are there any other Members-elect who wish to offer a challenge?

The Chair recognizes the gentleman from Indiana [Mr. MYERS].

Mr. [John] MYERS of Indiana. Mr. Speaker, upon my responsibility as a Member-elect of the 99th Congress, I object to the oath of office being administered to the gentleman from Idaho, Mr. RICHARD STALLINGS. I base this upon statements and information which I deem reliable.

The SPEAKER. Are there any other Members-elect to be challenged?

The Members-elect that have been challenged will be seated. The remaining Members will take the oath of office.

The Members-elect and Delegates-elect and the Resident Commissioner-elect rose, and the Speaker administered the oath of office to them.

The SPEAKER. Congratulations. The gentlemen and gentlewomen are now Members of the 99th Congress of the United States.

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#### REFERRING ELECTION OF A MEMBER FROM THE EIGHTH CONGRESSIONAL DISTRICT OF INDIANA TO THE COMMITTEE ON HOUSE ADMINISTRATION

Mr. WRIGHT. Mr. Speaker, I have a privileged resolution at the Clerk's desk, and I ask for its immediate consideration.

The Clerk read the resolution, as follows:

##### H. RES. 1

*Resolved*, That the question of the right of Frank McCloskey or Richard McIntyre to a seat in the Ninety-ninth Congress from the Eighth Congressional District of Indiana shall be referred to the Committee on House Administration, when elected, and neither Frank McCloskey nor Richard McIntyre shall be sworn until the Committee on House Administration reports upon and the House decides such question. For each day during the period beginning on the date on which this resolution is agreed to and ending on the day before the date on which the House decides such question, Frank McCloskey and Richard McIntyre shall each be paid an amount equal to the daily equivalent of the annual rate of basic pay payable to a Member of the House. For the period beginning on the date on which this resolution is agreed to and ending on the date on which the House decides such question, the Clerk of the House shall provide for clerical assistants in the manner provided by law for the case of death or resignation of a Member and shall otherwise perform full administrative functions with respect to the Eighth Congressional District of Indiana. There shall be paid from the contingent fund of the House such sums as may be necessary to carry out this resolution.

The SPEAKER. The gentleman from Texas [Mr. WRIGHT], under the precedents, is recognized for 1 hour

Mr. WRIGHT. Mr. Speaker, for purposes of debate only, I shall yield 30 minutes to the gentleman from Minnesota [Mr. FRENZEL], and pending that, I yield myself such time as I may consume.

##### PARLIAMENTARY INQUIRY

Mr. [George] GEKAS [of Pennsylvania]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. Does the gentleman from Texas yield for a parliamentary inquiry?

Mr. WRIGHT. I yield to the gentleman from Pennsylvania for a parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. GEKAS. I simply would ask the Speaker of the House to pose the question that is before the House precisely so that we know about what the debate to ensue is concerned.

Mr. WRIGHT. I will be glad to explain, Mr. Speaker.

The SPEAKER. The answer to the point of parliamentary inquiry is the gentleman from Texas [Mr. WRIGHT] has offered in the House a resolution which the Clerk has read. That is what the House is debating, and that is what we will vote on.

Mr. GEKAS. Then, Mr. Speaker, I simply would ask the gentleman to repeat at the outset the body of the resolution which he has presented.

The SPEAKER. The gentleman from Texas [Mr. WRIGHT] is recognized.

Mr. WRIGHT. Mr. Speaker, I will be happy to explain the resolution.

This is a very simple resolution which follows precedents previously established in the House in situations which are similar. This resolves the question in regard to the disputed election in the Eighth Congressional District of Indiana in the same manner in which previous disputes of a similar and, in fact, almost identical nature have been resolved in the House.

The resolution provides that the question of the right of Frank McCloskey or Richard McIntyre to a seat in the 99th Congress shall be referred to the Committee on House Administration, and that neither Frank McCloskey nor Richard McIntyre shall be sworn until the Committee on House Administration reports upon, and the House decides, the question of which is truly and duly elected.

This House, Mr. Speaker, has been invested by the Constitution with the responsibility to judge the qualifications, returns, and elections of its Members. That responsibility the House always has taken very seriously. To prevent election disputes from degenerating into partisan confrontations, the House has created a general presumption in favor of the candidate who is certified by the appropriate State election official as a Member-elect. That certification carries with it the presumption that the State election procedures have been timely, regular, and fairly implemented.

The House will reject a certification only under the most exceptional circumstances, where the very ability of the State election procedures to determine the outcome accurately is put into serious question. Regrettably the election in the Eighth Congressional District of Indiana falls into this most narrow of exceptions.

The election procedures employed in the Eighth Congressional District have been neither timely nor regular, and serious questions have been raised with respect to their fairness. As of today, the recount provided for by State law is far from complete. Major changes in the election totals occur almost daily. The outcome of the race has changed as different counties have concluded their recounts. The results from the counties which have certified new recount totals would give Mr. McCloskey a lead of some 47 votes at this particular moment, and that, of course, differs from the results upon which the secretary of state based his certification to the House. His certification reflects only the totals from the first county of the multicounty district which completed its recount.

The State procedures have consequently failed to produce a timely resolution of the election on which the House can confidently rely in discharging our constitutional responsibility.

Neither has the State procedure been regular in its application; 15 separate counties are participating in the recount. Each such county is operating under its own set of rules.

As a consequence, ballots bearing identical minor flaws are counted or not counted, depending upon the individual county involved. There is no uniformity of rule or application. Literally hundreds of votes already have been disallowed.

The technical requirements for counting votes in Indiana are so complex and so confusing that the recount underway has not to date produced a result on which the House can rely. Discrepancies in vote totals from election night and during the recount make it absolutely impossible at this stage to determine with certitude who is the duly elected Member from the Eighth Congressional District of Indiana. Seating one candidate or another would be based on mere speculation.

Questions have been raised additionally about the extent to which the certification and recount procedures may have been subject to partisan pressures, and this puts into question the impartiality and the fairness of the process. The combination of these factors renders the House at this time unable to judge the election in a manner commensurate with its constitutional responsibility to the people of the Eighth Congressional District of Indiana. The election procedures to date have simply not yielded a result on which the House can judge.

A very similar, in fact almost identical situation confronted the House in 1961 in a contest between Mr. Roush and Mr. Chambers.

Ironically, that case arose also in the State of Indiana. In that instance, which forms the closest on-point precedent to the present situation, Mr. Chambers was certified by the secretary of state as having been elected based upon a unilateral determination of error on the part of the secretary of state. In that instance the House asked both candidates to stand aside, as this resolution would ask today.

In that prior instance the complete investigation and recount revealed that the secretary of state was in error and that Mr. Roush had been duly and truly elected.

And so, Mr. Speaker, in keeping with the solemn constitutional responsibility of the House and pursuant to the best precedent available to us, I find it most unfortunate that we are resorting to this extraordinary measure, but I find it to be the only fair and honorable procedure available to us.

Let me assure my colleagues, and more importantly assure the voters of the Eighth Congressional District of Indiana, that this matter will be resolved fairly and openly, and I hope, trust, and intend that it shall be resolved expeditiously.

Mr. Speaker, I reserve the balance of my time.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I yield 2½ minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL]. . . .

To do anything short of seating Mr. McIntyre, in effect disenfranchises 500,000 Indiana citizens for an indefinite period of time.

They would have no voice, no voice, and without good cause.

One final point: The shadow of the Supreme Court case of Powell versus McCormack rests in this Chamber today. Some of us recall how the House excluded Representative-elect Powell from the 90th Congress. He had a certificate of election. Let us remember that the bottom line of that decision was "In judging the qualification of its Members under Article I, section 5, the Congress is limited to the standing qualifications expressly prescribed by the Constitution." And that is, as I recall from my grade school history, being 25 years of age, a citizen of the United States for 7 years, an inhabitant of the State from which one is elected, and holding a certificate of election from one's secretary of State. That is all that it says.

And we were in error some time ago when we denied a Member a seat because we did not adhere to those four basic principles and you are going to do the same thing here today if you do not vote down the gentleman from Texas' resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana, Mr. McIntyre.

The SPEAKER. The gentleman does not have the right to participate in debate unless the House agrees. If there is an objection from the House, the gentleman may not speak.

Without objection, the gentleman is entitled to 5 minutes.

There was no objection.

Mr. MCINTYRE. Thank you, Mr. Speaker.

Mr. Speaker, and Members of the House, I did not expect my maiden speech to the House to be like this and I wish that it was not. But I do appreciate the opportunity.

As you know from the testimony here today we had a very close election in Indiana. I was certified the winner by 34 votes. . . .

Mr. WRIGHT. Mr. Speaker, I yield myself such time as I may consume. I had not intended to speak again on this subject; I do so only to make abundantly clear in the RECORD that no violation of precedent or principle is being contemplated by the resolution presently under consideration. . . .

I have just one other thing to say, and this is with respect to the suggestion that somehow what we are doing today runs contrary to the ruling of the Supreme Court in the case of Powell versus McCormack. That is not true either.

Section 5 of article I of the Constitution reads as follows:

Each House shall be the judge of the elections, returns, and qualifications of its own Members.

In the McCormack case, we were not attempting to Judge an election; we were presuming to judge qualifications. The Court, in my opinion rightly, held that the House could not add to the constitutionally enumerated qualifications. So in the case of Mr. Powell we were held by the court to have acted unconstitutionally. We were not Judging an election; we were judging qualifications.

Today, there is no question of qualifications. Nobody has suggested that the splendid young gentleman, Mr. McIntyre, lacks qualifications or that he is not constitutionally qualified to serve if it shall be determined that he was, indeed, duly elected. Nobody has made that suggestion. We are not presuming to judge his qualifications, as the House has in the Powell case.

What we are attempting to do here is to fulfill our constitutional responsibility to make certain that an election has been duly and truly held, that its result has been timely and regular, and that the procedures have been fair. In this instance, there is serious question.

So we are attempting to do what we think is the only fair thing to do. That is to ask each of the two contestants to stand aside until the Committee on House Administration shall have completed its recount and rendered its judgment.

Mr. Speaker, on the resolution, I call for the previous question.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield for a question on his resolution?

Mr. WRIGHT. Mr. Speaker, I will withhold my call for the previous question in order that I may yield to my friend, Mr. FRENZEL.

Mr. FRENZEL. I appreciate the gentleman yielding.

Mr. Speaker, on page 2, in lines 13 through 19, it describes the duties of the Clerk providing clerical assistance to maintain the full administrative functions for the Eighth District of Indiana.

My question is: Can the distinguished majority leader assure us that none of the employees of former Congressman McCloskey will be maintained on the House payroll for the purposes of performing full administrative functions with respect to the Eighth District of Indiana?

Mr. WRIGHT. I think I understand the gentleman's question.

I would presume that the Clerk of the House will act in exactly the same way as he did in the Phil Gramm case, and exactly as he does in cases involving the death of a Member. I think that is in keeping with his constitutional responsibilities.

I move the previous question on the resolution, Mr. Speaker. . . .

The question is on ordering the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 238, nays 177, not voting 11, as follows:

[Roll No. 3] . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

**§ 4.2 Where the right of a Member-elect to take the oath of office was challenged, the Majority Leader offered a resolution authorizing the Speaker to administer the oath to the Member-elect.<sup>(23)</sup>**

On January 3, 1985,<sup>(24)</sup> the following occurred:

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I have a privileged resolution at the Clerk's desk, and I ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 2

*Resolved*, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Idaho, Mr. STALLINGS.

The SPEAKER.<sup>(25)</sup> The gentleman from Texas [Mr. WRIGHT] is recognized for 1 hour.

Mr. WRIGHT. Mr. Speaker, I do not expect this debate to consume an hour.

Mr. Speaker, I will yield 15 minutes, for purposes of debate only, to the gentleman from Indiana [Mr. MYERS]. I also yield myself 15 minutes for that purpose, pending

23. *Parliamentarian's Note*: As noted in debate on this resolution, notice of an election contest had been filed with the Clerk pursuant to statute (2 U.S.C. §§ 381 *et seq.*) and an investigation begun. As a result, it was not necessary for the House to refer the issue to the final right to the seat to the Committee on House Administration.
24. 131 CONG. REC. 381, 388–89, 391, 392, 99th Cong. 1st Sess. See also Precedents (Wickham) Ch. 4 § 3.6 (broadcasting committee proceedings on recount of ballots in election contest).
25. Thomas O'Neill (MA).

which, for that purpose only, I yield 15 minutes to the gentleman from Indiana [Mr. MYERS].

Mr. MYERS of Indiana. Mr. Speaker, earlier today when two Members were asked to stand aside, I asked to be one of those to stand aside for one reason.

I asked for Mr. STALLINGS of Idaho to stand aside for one reason. Even though it is not required by statute to do this, historically we have asked seats in question to stand aside, and then be sworn in without prejudice. . . .

I include the following:

STATE OF IDAHO,  
SECRETARY OF STATE,  
*Boise, January 2, 1985.*

BENJAMIN J. GUTHRIE,  
*Clerk, U.S. House of Representatives,  
U.S. Capitol, Washington, DC.*

DEAR MR. GUTHRIE: As the chief election officer of the State of Idaho I present this correspondence to further inform your office of certain proceedings presently pending in Idaho.

The Second District Congressional election in Idaho was decided by 170 votes.

Since issuance of the certificate of election by my office, certain allegations of substantial irregularities involving registration and voting in Blaine County, Idaho, have been presented by a member of our legislature. The alleged irregularities are stated to be of sufficient volume to potentially change the result of this congressional election.

In light of these complained of election irregularities, our office has sought the assistance of the Idaho Attorney General's office. The Idaho Attorney General's office is presently investigating these matters.

As you are aware our office has requested the assistance of the U.S. Attorney's office in investigating this matter.

Presently the U.S. Attorney's office has referred this request to their chief of election crimes branch in order that review of this matter may be expedited.

In Blaine County, Fifth District Judge Douglas Kramer has appointed special inquiry Magistrate Judge William Hart of Lincoln County, Idaho to head a probe of alleged voter fraud and election irregularities in Blaine County.

Blaine County Prosecuting Attorney Keith Roark, a democrat, has also initiated an investigation in this matter. The special inquiry procedure gives the prosecutor broad subpoena powers to investigate these matters. Mr. Roark has also asked the Federal Bureau of Investigation to Join in this investigation as well.

In the Idaho legislature, a special legislative committee will investigate the alleged election irregularities in Blaine County.

As the State's Chief Election official, I have pledged full cooperation and support to any partisan, bipartisan or non partisan agency, committee or office investigating the election irregularities in Blaine County, Idaho.

Since it is contended the outcome of these investigations may have a substantial impact on this election as well as other local elections. I have requested that these bipartisan investigations be completed as soon as is possible.

It continues to be my fervent hope that these matters will be resolved shortly and that the will of the people of Idaho will be accurately stated by sending to Washington that representative duly and lawfully elected.

Yours Truly,

PETE T. CENARRUSA,  
*Secretary of State of Idaho.* . . .

It will be a matter of delight for me to see how my friends on the Democratic side can rationalize one vote one way and another vote the other.

Let us look at the difference in the two campaigns. Both of them were close contests. STALLINGS was declared a winner by 170 votes; McIntyre by 40. Was there a contest filed by McCloskey? No. Is there a contest in the STALLINGS race? Yes, there is, duly filed with the House of Representatives, and of course a flock of court cases. . . .

Mr. WRIGHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is significant that each of those on the other side who have spoken to this question have urged an aye vote on my motion. . . .

I think there are several clearly distinguishable features between this instance and the instance which we earlier resolved. In the first place, the Idaho case is similar to hundreds of cases that have occurred, whereas the Indiana case is distinct in various particulars. In the Idaho instance, the process was completed in a timely fashion. In Indiana, the process is unlikely to be completed for weeks yet to come. In Idaho, uniform procedures were followed for counting the ballots. In Indiana, the ballots were counted under 15 different sets of rules, and some of them have not been fully counted yet.

In Idaho the certification proceeded according to State law. In Indiana, the certification was held up until one county completed its recount, then hastily made and has not been left open for change. In Idaho, there was no discrepancy in the result. A recount was conducted by the State, was completed, and the gentleman from Idaho [Mr. STALLINGS], was declared to be the victor.

In Indiana, by contrast, the result is different according to which recount totals one uses. In Idaho, the State law is clear. In Indiana, the State law is complex and confusing. In Idaho, there were very few votes disallowed. In Indiana, hundreds, literally hundreds of votes have been disallowed.

Finally, in Idaho, all the State remedies have been exhausted and Mr. STALLINGS has been declared the winner. In Indiana, State remedies still remain. For all of these reasons, the two cases are clearly distinguishable, and I do not expect that Members are likely to vote against this present resolution, but I do want all of us to understand that in so doing we are not behaving in a manner inconsistent from the manner which we followed earlier in our determination that we were not yet prepared on the strength of the information available to us at this moment, to declare who the winner was in the instance of the Eighth District of Indiana.

In the present instance, I think we are prepared, and I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. [Thomas] FOLEY [of Washington]). Without objection, the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 407, nays 0, answered “present” 1, not voting 18, as follows:

[Roll No. 4] . . .

The SPEAKER. Will the gentleman from Arizona [Mr. UDALL] kindly bring the gentleman from Idaho [Mr. STALLINGS] to the well?

Does the gentleman from Arizona have any remarks that he wishes to express at this time?

Mr. [Morris] UDALL [of Arizona]. No, Mr. Speaker.

The Speaker administered the oath of office to the Member-elect, the Honorable RICHARD H. STALLINGS of Idaho.

The SPEAKER. Congratulations. You are now a Member of the Congress of the United States.

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