individuals may be precluded from membership in the House as a consequence of their prior impeachment and conviction.

§ 4. Incompatible Offices

The separation of powers principle inherent in the structure of the Federal government is manifested in a variety of constitutional provisions. One such provision is found in section 6 of article I,[1] and delineates restrictions on Members of Congress serving simultaneously in other government positions: "No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office." This provision ensures that powers delegated to the different branches of government are not commingled by being exercised by the same person.[2]

The prohibition described in this constitutional provision is two–fold. First, a Member of the House may not simultaneously serve in an "office" under the United States, such concurrent service being considered incompatible with service as a Member. Second, a Member may not be appointed to any office that was either created during the time the Member was serving in Congress, or whose compensation was increased during such time. This section discusses both prohibitions.

Definitions; Application

The Constitution does not precisely define an "office" for purposes of determining whether service in Congress is incompatible. Subsequent practice by the House (as well as case law laid down by the courts) has established certain guidelines for determining whether or not a Member may accept an additional office during their term. There has been broad consensus that the primary offices within other branches of the Federal government are incompatible with congressional service.[3] So, for example, Members of Congress

1. U.S. Const. art. I, § 6, cl. 2; and *House Rules and Manual* §§ 96, 97 (2021).
2. In referring to this constitutional provision, an 1864 committee report evinced the view that "[t]he House has ever been awake to this constitutional guaranty of its independence." 1 Hinds' Precedents § 492. Even earlier, in 1816, Rep. John Randolph of Virginia "urged that the House should be very jealous of any invasion of these guaranties of the Constitution." 1 Hinds' Precedents § 506.
3. Similarly, simultaneous service in both Houses of Congress is impermissible. See fn. 6, *infra*.

may not be appointed to Cabinet positions in the executive,[4] or to open seats in the judicial branch,[5] and may not be seated in the Senate,[6] without first resigning their House seats.

An 1867 Supreme Court case[7] articulated certain principles regarding what constitutes a "public office." Specifically, the Court held that: "An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties."[8] In 1899, the Committee on the Judiciary reported to the House the results of its investigation into whether certain Members had accepted incompatible offices.[9] The committee report relied heavily on the *Hartwell* analysis, including the four elements of tenure, duration, compensation (emoluments), and duties.[10] Additionally, the committee report cited other authorities for the proposition that the office must confer upon the individual "legislative, executive, or judicial powers"[11] or "some of the sovereign functions of government, to be exercised . . . for the benefit of the public."[12]

The issues of tenure and duration may be reframed as an inquiry into the temporal nature of the position at issue. Where the position is merely "transient, occasional, or incidental"[13] the office may be deemed to be compatible with service as a Member of the House. For example, early practice showed that Members of Congress would occasionally be appointed by the executive to undertake certain temporary offices—inspector of post roads, examiner of land offices, treaty negotiator, etc.—and a House committee concluded that such temporary service (even if compensated) did not violate the Constitution.[14] By contrast, an examination into concurrent service in

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4. For examples of Members of the House resigning to take positions within the executive branch, see Deschler's Precedents Ch. 37 § 4.2.

5. For examples of Members of the House resigning to assume judicial positions, see Deschler's Precedents Ch. 37 §§ 4.8, 4.9.

6. For examples of Members resigning their House seats in order to serve in the Senate, see Deschler's Precedents Ch. 37 §§ 4.3, 4.4. See also 1 Hinds' Precedents § 502 (where a Member had accepted a seat in the Senate, the House adopted a resolution declaring his House seat vacant).

7. *United States* v. *Hartwell,* 73 U.S. 385 (1867).

8. *Id.* at 393.

9. See 1 Hinds' Precedents § 493.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. See 1 Hinds' Precedents § 495. In 1806, the House considered a resolution declaring "That a contractor under the Government of the United States is an office within the

Congress and the National Guard led one House committee to report that, "it is apparent that a commissioned officer in the National Guard clearly meets the definition in United States v. Hartwell of an officer of the United States; that is, that his office embraces the idea of tenure, duration, emoluments, and duties, and that his duties are continuing and permanent, not occasional and temporary."(15)

The issue of compensation (or emoluments) has been raised on several occasions in the context of determining whether the office under consideration is incompatible with congressional service. As early as 1816, the House debated whether providing compensation to the delegation negotiating the Treaty of Ghent violated the constitutional prohibition.(16) Another war commission (the World War Foreign Debt Commission) was the subject of similar deliberation in the Senate in 1922.(17) There, the majority opinion of a committee report concluded that the offices were incompatible, but minority views, as well as the opinion of the Attorney General, concluded otherwise, and the Senate voted to confirm the appointments.(18) Under the Attorney General's reasoning, the positions were compatible because "[t]he commissioners receive no compensation."(19) In 1945, Congress passed a law providing for U.S. participation in the United Nations. An amendment offered in the House provided that no compensation would be paid to the U.S. representative to the U.N. should such person be a Member of Congress.(20) The legislative history of this amendment reveals that Members believed this provision was necessary to cure possible incompatibility under the Constitution.(21)

With respect to duties, it has been held that some offices require affirmative duties that are inherently in conflict with service in Congress. Although the office of Governor of a state is, by definition, not an office "under the United States," House precedents state that there is "an absolute inconsistency in the functions of the two offices, Member of Congress and governor."(22) But where an office has no duties to perform, acceptance of the

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purview and meaning of the Constitution, and, as such, is incapable of holding a seat in this House." However, the House rejected this resolution. See 1 Hinds' Precedents § 496.

15. See 6 Cannon's Precedents § 60.

16. See 1 Hinds' Precedents § 506.

17. See 6 Cannon's Precedents § 64.

18. *Id.*

19. *Id.* See also 6 Cannon's Precedents § 63 (service on the board of a soldier's home was compatible as "the members of the Board of Managers receive no compensation.").

20. See Deschler's Precedents Ch. 7 § 13.2.

21. *Id.*

22. See 6 Cannon's Precedents § 65. For an example of a Member resigning her seat in the House in order to accept the office of state Governor, see § 4.4, *infra.* For an example of the House adopting a privileged resolution to authorize the administration of the

office by a Member may be permitted. In one instance, a Member retained an office (Federal tax assessor) beyond the beginning of his congressional term, but the House concluded that the assessments had already occurred and that therefore "no official duty remained to be performed" by the Member.(23)

Military Service

The issue of military service has long been a concern of Congress with regard to the constitutional prohibition on incompatible offices. The earliest precedents indicate that the House considered acceptance of a military commission as being fundamentally incompatible with congressional service.(24) In 1803, a Member of the House was appointed by President Thomas Jefferson to a position in the militia of the District of Columbia.(25) The House subsequently voted unanimously for a resolution declaring the Member as having forfeited his seat by this action.(26) Similar cases in the pre–Civil War period stand for the general principle that acceptance of a military commission automatically creates a vacancy in the seat held by the accepting Member.(27)

The issue of concurrent military and congressional service again came before the House in the late 19th century, during both the Civil War(28) and the Spanish–American War.(29) In the context of the latter, the Committee

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oath to a Member–elect following completion of his service as Governor, see § 4.2, *infra.* For a 1792 example of a Member assuming that acceptance of a state judicial position rendered him ineligible for further service in the House, see 1 Hinds' Precedents § 501. For proceedings involving concurrent service as a Member and as an elected municipal officer (city council), see § 4.3, *infra*. It should be noted that any action by the House in response to a Member or Member–elect holding a state or local office must be carefully considered in light of the Supreme Court's holding in *Powell* v. *McCormack,* 395 U.S. 486 (1969). See § 3, *supra.*

23. 1 Hinds' Precedents § 497.

24. *Parliamentarian's Note:* In an 1862 case, the Committee on Elections had occasion to discuss the distinction between service in the Army of the United States and service in a state militia. For purposes of determining constitutional incompatibility, the committee found such distinction "of little importance. If [the Member] was actually mustered into service of the United States, he was, by that act, placed in an office totally incompatible with that of Representative in Congress." 1 Hinds' Precedents § 490.

25. See 1 Hinds' Precedents § 486.

26. *Id.* Rep. John Randolph of Virginia "asked the House, in the important precedent which it was about to establish, to vote unanimously to exclude even the shadow of executive influence."

27. See 1 Hinds' Precedents §§ 487–489.

28. See, *e.g.*, 1 Hinds' Precedents §§ 490–492.

29. See, *e.g.*, 1 Hinds' Precedents §§ 493, 494.

on the Judiciary reported (consistent with earlier cases) that "the office of Member of Congress and an officer in the Army of the United States are incompatible and can not be held at the same time."[30]

During World War I, several Members of the House took leaves of absence in order to attend military training exercises for possible mobilization. In 1916, the Committee on the Judiciary was tasked with investigating whether service in the National Guard was compatible with congressional service. Relying on the *Hartwell* decision,[31] it concluded once again that "the seats of those Members of the House of Representatives who shall accept commissions in the National Guard . . . will at once become vacant."[32] Subsequently, the House did adopt a resolution providing for salary and clerk allowances for such Members during their leaves of absence, subtracting any compensation received for their Army service.[33]

During World War II, the executive played a greater role policing the appropriate boundary between congressional service and military service. As with previous military conflicts, Members began requesting leaves of absence so that they could attend military training exercises.[34] In response, the Secretary of War and the Secretary of the Navy informed the Speaker that activation of Members with reserve commissions would be discouraged, and that new applications for enlistment by Members would not be approved.[35] The President subsequently recalled Members who had been in active military service back to Congress.[36] Faced with the choice of serving either in the House or in the military, some Members chose to resign their House seats.[37] Others chose to delay their taking of the oath of office in order to complete military service before assuming their seats in the House.[38] Unlike in World War I, Members who took leaves of absence for military service during World War II were not provided congressional salary during that period.[39]

An 1899 report noted that "it is settled law that persons on the retired list of the Army do not hold office under the United States in the constitutional sense."[40] However, in 1921, a Member who was commissioned in the

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30. 1 Hinds' Precedents § 494.
31. *United States* v. *Hartwell,* 73 U.S. 385 (1867).
32. 6 Cannon's Precedents § 60.
33. See 6 Cannon's Precedents § 61.
34. See Deschler's Precedents Ch. 7 § 14.4.
35. See Deschler's Precedents Ch. 7 § 14.3.
36. *Id.*
37. See Deschler's Precedents Ch. 7 § 14.6.
38. See Deschler's Precedents Ch. 7 § 14.5.
39. See Deschler's Precedents Ch. 7 § 14.7.
40. 1 Hinds' Precedents § 494.

Army reserves requested a leave of absence to attend military training—a request that drew objection on grounds of possible incompatibility.(41) A statute originally enacted in 1956 specifically provides that: "A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity."(42) In 2003, a Member requested an indefinite leave of absence in the expectation that he would be called up from the Army reserves to active duty.(43)

Procedure; Timing

Under modern practice, issues involving incompatible offices are typically resolved before the potential for conflict arises—either via the resignation of the Member from the House prior to the assumption of the other office,(44) or the resignation of a Member–elect from a potentially incompatible position prior to taking a seat in the House. Thus, the House often takes no cognizance of the potential conflict beyond acknowledging the vacancy created by a Member's resignation. In the 19th century, Members would sometimes inform the House that they were accepting an incompatible office (with or without explicitly resigning their House seats), and the House would pass a resolution declaring the affected seat vacant.(45) In one instance, the issue arose whether the adoption of such a resolution constituted, in effect, an expulsion from the House, and would therefore require

41. See 6 Cannon's Precedents § 62.

42. 5 U.S.C. § 2105(d).

43. See § 4.1, *infra.* Although the request was granted without objection, the Member was never called up to active service.

44. See, *e.g.*, § 4.4, *infra*.

45. See, *e.g.*, 1 Hinds' Precedents § 487. Some older proceedings suggested that the acceptance of an incompatible office automatically creates a vacancy in the affected seat, without further action by either the Member or the House. For example, a committee report in 1898 stated that when Members accept Army commissions, their seats "are vacant, and have been since they accepted their commission in the Army. The only action necessary to so declare by resolution, as a matter of convenience and to aid the Speaker and others in discharging their public duties. No act or resolution of Congress can change the legal effect of their acts." 1 Hinds' Precedents § 494. A 1909 committee report likewise stated that "[W]hen a person, while occupying one position accepts another incompatible with the first he, ipso facto, absolutely vacates the office and his title thereto is terminated without any further act or proceeding." 6 Cannon's Precedents § 65. However, it should be noted that this theory is not in consonance with modern practice, and issues involving possible disqualification from service in the House should be viewed in light of the Supreme Court's holding in *Powell* v. *McCormack,* 395 U.S. 486 (1969).

the constitutionally–mandated two–thirds vote.(46) However, the House sustained the Speaker's ruling that the resolution merely declaring the vacancy should not be construed as an expulsion from the House.(47)

Because the constitutional prohibition on incompatible offices applies only to simultaneous service, a relevant factor is timing, *i.e.*, whether the individual actually held both offices at the same time. An individual elected to the House does not become a Member until the term of office begins and the oath of office is taken.(48) Thus, during the period between the certification of the election results and the beginning of the new Congress (when the individual is merely a "Member–elect"), simultaneous service in an otherwise incompatible office is permissible. A Member–elect holding an incompatible office has until the beginning of the Congress to decide whether to accept the House seat and resign the incompatible office, or retain the incompatible office and decline the seat in the House.(49) There have been numerous instances of Members of the House(50) (and Senators)(51) retaining their additional office beyond the start of the new Congress, and delaying the administration of the oath of office until they had resigned the other office.

Creating Offices; Increasing Emoluments

The other prohibition contained in section 6 of article I of the Constitution prevents the appointment of Members of Congress to civil offices of the United States whose "emoluments" were increased by law during the time that the individual served in Congress. The rationale for this constitutional provision is to prohibit Members of Congress from voting to increase the compensation of positions to which said Members may then later be appointed.(52) The same clause of the Constitution prohibits the appointment

46. U.S. Const. art. I, § 5, cl. 2 ("Each House may . . . punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.").

47. 1 Hinds' Precedents §§ 490, 504.

48. For more on the oath of office, see Precedents (Wickham) Ch. 2.

49. "The House has manifestly leaned to the idea that a contestant holding an incompatible office need not make his election until the House has declared him entitled to the seat." 1 Hinds' Precedents § 505. See also 1 Hinds' Precedents §§ 492, 498, and 499 (examples of Members resigning incompatible offices prior to the beginning of a new Congress); 1 Hinds' Precedents § 500 (example of an Army officer elected to Congress but declining to take his seat); and Deschler's Precedents Ch. 7 § 14.6 (examples of Members resigning their House seats to serve in the military in World War II).

50. See Deschler's Precedents Ch. 7 § 14.5. See also § 4.2, *infra.*

51. See 1 Hinds' Precedents § 503; and Deschler's Precedents Ch. 7 § 13.1.

52. *Parliamentarian's Note:* Although the presumed purpose of the clause is to prevent Members of Congress from participating in the design of government positions that

of Members to newly–created positions as well, for the same concerns over possible conflicts of interest.

It has been held that where an increase in compensation is merely speculative, and not a certainty, the constitutional proscription does not apply.(53) For example, where a Member was nominated to become Secretary of Defense, the Attorney General opined that the procedures under the newly–enacted Federal Salary Act for increasing the compensation of Cabinet officials did not provide a guarantee that such an increase would actually occur.(54) Similarly, in 1937, the Senate confirmed a Senator to the Supreme Court, overriding concerns that the new justice might eventually receive retirement benefits that had been increased during his term in the Senate.(55)

In order to avoid any possible controversy under this constitutional provision, Members of Congress may choose to resign their seats to assume the new office before the increase in compensation becomes effective.(56) Alternatively, Congress has on occasion passed legislation to specifically reduce or roll back the salary of the public office at issue, so that an otherwise ineligible Member of Congress may be appointed to that office. This method of achieving constitutional compliance has been called the "Saxbe fix,"(57) after Senator William Saxbe of Ohio, who was nominated by President Richard Nixon to become Attorney General. Congress passed a law to roll back

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they may later fill themselves, the language of the clause speaks only to the temporal issue: the position cannot have been created (or the emoluments thereof increased) "during the Time for which [the Member of Congress] was elected." U.S. Const. art. I, § 6, cl. 2. Thus, some sources have argued that the resignation of a Member of Congress does not cure the ineligibility, so long as the relevant law was passed at some point during the term to which such Member elected. See, *e.g.*, 17 Op. Att'y Gen. 365 (1882). Indeed, in the very first controversy over a possible violation of this constitutional provision, President George Washington withdrew his appointment of a Senator to the Supreme Court so that it could be resubmitted following the expiration of the Senator's term (notwithstanding the fact that the Senator had previously resigned his Senate seat). See *The Emoluments Clause: History, Law, and Precedents,* CRS Report R40124 (Jan. 7, 2009).

53. See Deschler's Precedents Ch. 7 § 13.6.

54. *Id.*

55. See Deschler's Precedents Ch. 7 § 13.4.

56. See Deschler's Precedents Ch. 7 § 13.5. See also Deschler's Precedents Ch. 37 § 4.8.

57. *Parliamentarian's Note:* Although the term "Saxbe fix" is often used to describe this legislative maneuver, the method did not originate at that time. In 1909, President William Taft nominated Senator Philander Knox of Pennsylvania to become Secretary of State. Because Congress had increased the compensation for the Secretary of State during Knox's congressional term, he was thought to be ineligible under the Constitution. In response, Congress enacted legislation to revert the salary back to its prior level. See *The Emoluments Clause: History, Law, and Precedents,* CRS Report R40124 (Jan. 7, 2009).

the salary of the Attorney General to what it had been prior to Senator Saxbe's term.(58) In subsequent decades, the "Saxbe fix" would be utilized on several occasions to reduce the compensation of executive officers in expectation that a Member of Congress would be chosen to fill a vacancy.(59)

§ 4.1 A Member has requested an indefinite leave of absence after informing the Speaker that he expected to be called up from the Army reserves to active duty.(60)

On March 20, 2003,(61) the Speaker made the following remarks, after which Rep. Steve Buyer of Indiana's request for an indefinite leave of absence was granted:

> HOPES AND PRAYERS FOR STEVE BUYER, MEMBER OF CONGRESS, AND HIS FAMILY AS HE DEPARTS FOR MILITARY DUTY
>
> (Mr. HASTERT asked and was given permission to address the House for 1 minute.)
>
> Mr. [Dennis] HASTERT [of Illinois]. Mr. Speaker, I would like to read into the RECORD a letter that I received today.
>
> "Dear Mr. Speaker: I have been called to active duty in the United States Army. Pending further orders, I request immediate indefinite leave of the United States House of Representatives to accommodate my military duties.
>
> "Respectfully, Steve Buyer, Member of Congress"
>
> Mr. Speaker and my colleagues, the resolution we are considering affects one of our own today and may affect others in the near future. Our hopes and prayers are with STEVE and his family as he prepares to depart for Iraq.
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>
> OUR DUTY TO PROTECT AMERICA
>
> Mr. HASTERT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

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58. See Deschler's Precedents Ch. 7 § 13.7. See also P.L. 93–178, 87 Stat. 697.

59. *Parliamentarian's Note:* Since the Saxbe case in 1973, the following additional cases have arisen: Robert Casey (a Member of the House) was appointed to the Federal Maritime Commission, and the salary of the commissioner position reduced by P.L. 94–195, 89 Stat. 1108; Edmund Muskie (a Senator) was appointed as Secretary of State, and the office's salary reduced by P.L. 96–241, 94 Stat. 343; Lloyd Bentsen (a Senator) was appointed as Secretary of the Treasury, and the office's salary reduced by P.L. 103–2, 107 Stat. 4; Hillary Clinton (a Senator) was appointed as Secretary of State, and the office's salary reduced by P.L. 110–455, 122 Stat. 5036; and Ken Salazar (a Senator) was appointed as Secretary of the Interior, and the office's salary reduced by P.L. 111–1, 123 Stat. 3.

60. *Parliamentarian's Note:* Although Rep. Steve Buyer's leave of absence was granted, he was never in fact called up to active military service.

61. 149 CONG. REC. 6958, 108th Cong. 1st Sess.

The SPEAKER pro tempore (Mr. [Michael] SIMPSON [of Idaho]). Without objection, the gentleman from Illinois is recognized?

There was no objection.

Mr. HASTERT. Mr. Speaker, we will be considering a very important resolution before us this evening. I rise in strong support of that resolution, and I expect that all of my colleagues would vote for it.

Our men and women in uniform are now engaged in an important conflict in the country of Iraq. We are engaged with 30-some other nations, and it involves certainly a tyrant who has defined himself over the last 20 years.

Like my colleagues, I remember the day of September 11, 2001. I remember standing in the front of my office waiting to get a call from the Vice President and looking and watching an unfamiliar phenomenon, a roll of black smoke going across the mall that I can look down from my window and see. And I asked one of my staff, I said, find out; that black smoke is not supposed to be there. A minute and a half later they came in and said, well, the third plane had gone into the Pentagon.

Little beknownst to me and the rest of us at that time, there was a fourth plane involved, and 9 or 10 or 11 brave young men and women brought that plane down into an empty field in southern Pennsylvania. We know now that if it had not been for the actions of those people, that plane would have been in the west front of the Capitol.

That being said, many of us visited right after the World Trade Center. We had walked the halls of the Pentagon and visited those folks who helped pull their comrades out, some to safety, some beyond help. We talked to the families who lost their folks in the Pentagon, the World Trade Towers; we passed some extraordinary legislation.

But this country suffered a huge loss that day. I think I speak for all of us when I say that that is something that we do not want to see visited upon this Nation again. We know that in Iraq Saddam Hussein has weapons of mass destruction. We know that he has a nexus to al Qaeda, and we know that that training has been going on over an extended period of time. I believe that it is our duty, this Nation's duty, to protect our Nation and to make sure that that is not visited upon this Nation ever again.

The men and women whom we are about to salute and wish well tonight and send our best thoughts and prayers to are doing a job that nobody wants to do. Nobody wishes this to have to happen. But in the tradition of this Nation, in the tradition of keeping this country free, and in the tradition of trying to stabilize the Middle East, we are doing this job. We are doing it with 30 other nations who have decided this is the right thing to do.

Mr. Speaker, as we go through this very sober debate tonight, I would ask for your positive consideration and positive vote.

COMMUNICATION FROM THE HONORABLE STEVE BUYER, MEMBER OF CONGRESS

The SPEAKER laid before the House the following communication from the Honorable STEVE BUYER, Member of Congress:

HOUSE OF REPRESENTATIVES,
March 20, 2003.

Hon. DENNIS HASTERT,

Speaker, House of Representatives, H–232, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I have been called to active duty in the United States Army. Pending further orders, I request immediate indefinite leave of the House of Representatives to accommodate my military duties.

Respectfully,

STEVE BUYER,
Member of Congress

LEAVE OF ABSENCE[62]

By unanimous consent, leave of absence was granted to:

Mr. BUYER (at the request of Mr. HASTERT) for an indefinite period of time on account of military service.

§ 4.2 The House has adopted a privileged resolution authorizing the administration of the oath to a Member–elect serving as a state Governor on a specified date following the expiration of their state office term.

On January 6, 1987,[63] the House adopted the following privileged resolution:

AUTHORIZING THE SPEAKER OR HIS DEPUTY TO ADMINISTER OATH OF OFFICE TO THE HONORABLE JOSEPH E. BRENNAN AT PORTLAND, ME

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I offer a resolution (H. Res. 8) and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore.[64] Is there objection to the request of the gentleman from Washington.

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 8

Whereas Joseph E. Brennan, a Representative-elect from the State of Maine, from the First District thereof, has been unable to appear in person to be sworn as a Member of the House, and there being no contest or question as to his election: Therefore be it

Resolved, That the Speaker, or deputy named by him, be. and he is hereby, authorized to administer the oath of office to the Honorable Joseph E. Brennan at Portland, Maine,

62. *Parliamentarian's Note:* Rep. Buyer's leave of absence request was inadvertently omitted from the *Congressional Record* of March 20, 2003. A note on the omission, and the request itself (as excerpted here) was printed in a subsequent edition of the *Congressional Record.* See 149 CONG. REC. 7307, 108th Cong. 1st Sess. (Mar. 24, 2003).

63. 133 CONG. REC. 19, 100th Cong. 1st Sess. For a similar case where the administration of the oath of office was delayed to accommodate continued service in an incompatible office, see Precedents (Wickham) Ch. 2 § 1.7.

64. Richard Gephardt (MO).

on or after January 9, 1987, and that the said oath be accepted and received by the House as the oath of office of the said Joseph E. Brennan.

The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 4.3 The House has adopted a resolution authorizing the administration of the oath to a Member–elect, notwithstanding her continued service as an elected municipal official.

On November 29, 2018,(65) the House adopted the following privileged resolution:

DIRECTING THE SPEAKER TO ADMINISTER THE OATH OF OFFICE TO THE REPRESENTATIVE-ELECT FROM THE 13TH CONGRESSIONAL DISTRICT OF MICHIGAN

Mr. [Sander] LEVIN [of Michigan]. Mr. Speaker, I offer a privileged resolution (H. Res. 1161) and ask for its immediate consideration in the House.
The Clerk read the resolution, as follows:

H. RES. 1161

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to Ms. Brenda Jones, a representative-elect from the 13th Congressional District of Michigan.

The resolution was agreed to.
A motion to reconsider was laid on the table.

SWEARING IN OF THE HONORABLE BRENDA JONES, OF MICHIGAN, AS A MEMBER OF THE HOUSE

The SPEAKER.(66) Will the Representative-elect and the members of the Michigan delegation present themselves in the well.
All Members will rise and the Representative-elect will please raise her right hand.
Ms. JONES of Michigan 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 115th Congress.

On December 6, 2018,(67) the Speaker inserted the following extension of remarks into the *Congressional Record*:

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65. 164 CONG. REC. H9700 [Daily Ed.], 115th Cong. 2d Sess.

66. Paul Ryan (WI).

67. 164 CONG. REC. E1601 [Daily Ed.], 115th Cong. 2d Sess. The Speaker's clarification that a question of constitutional incompatibility was not presented by these circumstances is consistent with the statement recorded in Deschler's Precedents Ch. 7

H. RES. 1161, RELATING TO THE ADMINISTRATION OF THE OATH TO THE MEMBER ELECT FROM THE 13TH DISTRICT OF MICHIGAN

HON. PAUL D. RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 6, 2018

Mr. RYAN of Wisconsin. Mr. Speaker, on November 29, 2018, the House by unanimous consent adopted House Resolution 1161 in advance of the administration of the oath of office to Representative BRENDA JONES of Michigan. Representative JONES was elected on November 6, 2018 to fill a vacancy in the 13th Congressional District of Michigan for the remainder of the 115th Congress. Her certificate of election was received by the House on November 29, 2018. Representative JONES also currently serves as the President of the Detroit City Council. Representative JONES has indicated that she will abide by guidance from the House Committee on Ethics to minimize the conflicts that may exist with her duties as President of the City Council during this short tenure in the House.

The Speaker, with the concurrence of the Democratic Leader, finds that this resolution (1) represents a narrow exception to the restriction established by the House on January 20, 1909, that the duties of a Member of the House and the Governor of a State are ''absolutely inconsistent'' and may not be ''simultaneously discharged'' by the same Member and (2) does not address the Constitutional qualifications of a Member.

§ 4.4 A Member submitted her resignation effective immediately prior to taking the oath as Governor of a state.

On December 27, 2018,[68] the Chair laid before the House the following communication from Rep. Lujan Grisham of New Mexico:

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

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

HOUSE OF REPRESENTATIVES,
Washington, DC, December 21, 2018.

Speaker PAUL RYAN,
The Capitol,

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§ 13 that while, "high state office is incompatible with congressional membership," the "Constitution does not prohibit Members of Congress from holding state elective or appointive offices." As noted (see fn. 22, *supra*), any action taken by the House in response to a Member or Member–elect holding state or municipal office should be carefully considered in light of the Supreme Court's holding in *Powell* v. *McCormack*, 395 U.S. 486 (1969). See also § 3, *supra*.

68. 164 CONG. REC. H10597 [Daily Ed.], 115th Cong. 2d Sess.

Washington, DC.

DEAR SPEAKER PAUL RYAN, Serving as the Congresswoman from New Mexico's First Congressional District has been one of the greatest honors of my life. However, I will be sworn into office as the Governor of New Mexico on January 1, 2019 at 12:01 a.m.

Therefore, I am resigning my Congressional seat effective December 31, 2018 at 11:59 p.m.

Sincerely,

MICHELLE LUJAN GRISHAM,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC, December 21, 2018.

Governor SUSANA MARTINEZ,
Office of the Governor,
Sante Fe, NM.

DEAR GOVERNOR MARTINEZ, Serving as the Congresswoman from New Mexico's First Congressional District has been one of the greatest honors of my life. However, I will be sworn into office as the Governor of New Mexico on January 1, 2019 at 12:01 a.m.

Therefore, I am resigning my Congressional seat effective December 31, 2018 at 11:59 p.m.

Sincerely,

MICHELLE LUJAN GRISHAM,
Member of Congress.

C. Salary and Benefits

§ 5. Salary and Benefits; Compensation

Pursuant to article I, section 6 of the Constitution, "Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States."[1] Although virtually all funding for legislative branch operations is provided in the annual Legislative Branch Appropriations bill, the salaries of Members of Congress (including Delegates and Resident Commissioners) are funded through a permanent appropriation in law.[2] Under the 27th

1. U.S. Const. art. I, § 6, cl. 1. See also *House Rules and Manual* § 85 (2021).

2. 2 U.S.C. § 4501. For more on the distinction between annual "discretionary" spending, and permanent "mandatory" or "direct" spending, see Deschler's Precedents Ch. 25; Deschler's Precedents Ch. 41; Precedents (_____) Ch. 25; and Precedents (_____) Ch. 41. Although Members' salaries are not funded through the annual appropriations