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## **Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives**

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# Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives

## Summary

The House of Representatives is expressly authorized within the United States Constitution (Article I, Section 5, clause 2) to discipline or “punish” its own Members. This authority of the institution of the House to discipline a Member for “disorderly Behaviour” is in addition to any criminal or civil liability that a Member of the House may incur for particular misconduct, and is a device or procedure designed not so much as merely a punishment of the individual Member, but rather ultimately as a measure to protect the institutional integrity of the House of Representatives, its proceedings and its reputation.

Congressional discipline of a Member by the House of Representatives is done by the House itself, without the necessity of Senate concurrence, and may take several forms. The most common forms of discipline in the House are now “expulsion,” “censure,” or “reprimand,” although the House may also discipline its Members in others ways, including fine or monetary restitution, loss of seniority, and suspension or loss of certain privileges. In addition to such sanctions imposed by the full House of Representatives, the standing committee in the House dealing with ethics and official conduct matters, the House Committee on Standards of Official Conduct, is authorized by House Rules to issue a formal Committee reproach in the form of a “Letter of Reproval” for misconduct which does not rise to the level of consideration or sanction by the entire House of Representatives. Additionally, the Committee on Standards of Official Conduct has also expressed its disapproval of certain conduct in informal letters and communications to Members.

The House may generally discipline its Members for violations of statutory law, including crimes; for violations of internal congressional rules; or for any conduct which the House of Representatives finds has reflected discredit upon the institution. Thus, each House of Congress has disciplined its own Members for conduct which has not necessarily violated any specific rule or law, but which was found to breach its privileges, demonstrate contempt for the institution, or which was found to discredit the House or Senate. When the most severe sanction of expulsion has been employed in the House, however, the conduct has historically involved either disloyalty to the United States Government, or the violation of a criminal law involving the abuse of one’s official position, such as bribery. The House of Representatives has actually expelled only 5 Members in its history, but a number of Members, believing that they were facing certain congressional discipline for various misconduct, resigned from Congress prior to any formal House action.

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# Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives

## Background

Each House of the United States Congress is expressly authorized within the Constitution to “punish” its own Members for misconduct. In imposing legislative discipline against its Members, the House operates through its rule making powers,<sup>1</sup> and the express provision for legislative discipline is set out along with Congress’ rule-making authority in Article I, Section 5, clause 2, of the Constitution:

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

The underlying justification for legislative discipline has traditionally been to protect the integrity and dignity of the legislative institution and its proceedings, rather than merely to punish an individual;<sup>2</sup> and such internal legislative process is *additional* to any potential criminal or civil liability that a Member might incur for any particular misconduct.<sup>3</sup> Members of Congress, like any other persons in the United States, are subject generally to outside law enforcement and criminal prosecution if their misconduct constitutes a violation of federal, State, or local criminal law. Unlike members of the legislatures or parliaments of many foreign nations, there is *no* general immunity from all criminal prosecution for Members of the United States Congress during their tenure in office. Rather, Members of

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<sup>1</sup>*Deschler's Precedents of the United States House of Representatives*, H. Doc. 94-661, 94<sup>th</sup> Cong., 2d Sess., Volume 3, Ch. 12, § 12, p. 168 (1979); Justice Joseph Story, *Commentaries on the Constitution of the United States*, Vol. II, § 835 (Boston 1883).

<sup>2</sup>Cushing, *The Law and Practice of Legislative Assemblies*, pp.250-251, 257-259, 268-270 (Boston 1874). Internal disciplinary action is “rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government.” *Deschler's Precedents, supra* at 174, citing *Powell v. McCormack*, 395 F.2d 577, McGowan concurring, at 607 (D.C.Cir. 1968), *rev'd on other grounds*, 395 U.S. 486 (1969); Story, *supra* at § 835. Note British Parliamentary practice: “The practice of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership.” Erskine May, *Law, Privileges, Proceedings and Usage of Parliament*, at 105 (London 1964).

<sup>3</sup>House ethics action does not foreclose a criminal prosecution on the same matter. *United States v. Rose*, 28 F.3d 181, 189-190 (D.C.Cir. 1994); 2 *Op. Atty. Gen.* 655 (1834); *United States v. Traficant*, 368 F.3d 646 (6<sup>th</sup> Cir. 2004), *cert. denied*, 543 U.S. \_\_\_\_ (Jan. 10, 2005).

Congress have a fairly limited immunity from outside prosecution for “Speech or Debate” in either House of Congress.<sup>4</sup>

Members of the House of Representatives are subject to internal, congressional discipline for any conduct which the institution of the House believes warrants such discipline. The express constitutional authority drafted by the Framers of the Constitution was drawn from the British parliamentary practice, as well as from our own colonial legislative experience, and reflects the principle and understanding that although the qualifications of Members of Congress were intentionally kept to a minimum to allow the voters the broadest discretion in sending whomever they please to represent them in Congress,<sup>5</sup> the institution of the House has the right to discipline those who breach its privileges or decorum, or who damage its integrity or reputation, even to the extent of expelling from Congress a duly-elected Member.<sup>6</sup>

Internal, congressional discipline of a Member may take several forms. The most common forms of discipline in the House of Representatives are now “expulsion,” “censure,” or “reprimand,” although the House may also discipline its Members in others ways, including fine or monetary assessment, loss of seniority, or loss of certain privileges.<sup>7</sup> An “expulsion” is a removal of a Member from the House of Representatives by a two-thirds vote of the House. A “censure” or a “reprimand” is a legislative procedure where the full House, by majority vote on a simple resolution, expresses a formal disapproval of the conduct of a Member. In addition to these punishments or disciplines by the entire House of Representatives, the House Committee on Standards of Official Conduct is authorized to issue, on its own accord, a “Letter of Reproval” to a Member when the Committee disapproves of conduct but makes no recommendation for legislative sanctions to the full House of

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<sup>4</sup>Under the “Speech or Debate” clause of the Constitution (Article I, Section 6, cl. 1), Members of Congress may not be questioned outside of Congress “for any Speech or Debate in either House,” that is, they are immune from criminal or civil proceedings only for their official conduct or activities which are deemed to be “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings.” *Gravel v. United States*, 408 U.S. 606, 625 (1972). The constitutional bar to the “Arrest” of Members during their attendance of, or “going to and returning from” a session of Congress for other than a felony or “Breach of the Peace” (Article I, Section 6, cl. 1), is an “obsolete” provision which applies only to arrests in civil suits, common in the 18<sup>th</sup> century, but does not apply to criminal arrests. *Williamson v. United States*, 207 U.S. 425, 446 (1908); *Long v. Ansell*, 293 U.S. 76 (1934); *Gravel, supra* at 614; *Deschler’s Precedents, supra* at Ch. 12, § 3.1; see discussion in *The Constitution of the United States, Analysis and Interpretation*, S. Doc. 103-6, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess., at 127 (1996). Contrary to popular myth and misunderstanding, Members of Congress are *not* constitutionally immune from arrest for traffic violations under this clause.

<sup>5</sup>Alexander Hamilton, II *Eliot’s Debates* 257; note also James Madison, 2 Farrand, *Records of the Federal Convention of 1787*, 249-250, and *Federalist Papers*, No. 57; *Powell v. McCormack*, 395 U.S. 486, 508, 509, 531 (1969).

<sup>6</sup>See note 2, *supra*; Story, *supra* at §§ 835-836. Note also Senator John Quincy Adams’ arguments in 1807 on Senate’s authority to expel a Member even after re-election, II *Hinds’ Precedents of the House of Representatives*, § 1264, p. 817 (1907).

<sup>7</sup>Rules of the Committee on Standards of Official Conduct, March 19, 2003, 108<sup>th</sup> Congress, Rule 24(e). *Deschler’s Precedents, supra* at Ch. 12, § 12.

Representatives. The Committee has also from time-to-time expressed its disapproval of particular conduct in informal letters and other communications to Members.

There is no precise listing or description in the Rules of the House of Representatives of the specific types of misconduct or ethical improprieties which might subject a Member to the various potential disciplines. The Rules adopted by the House Committee on Standards of Official Conduct provide simply that:

With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such right, power, privilege, or immunity.<sup>8</sup>

The House may discipline its Members for violations of statutory law, including crimes; for violations of internal congressional rules; or for any conduct which the House of Representatives finds has reflected discredit upon the institution.<sup>9</sup> Each House of Congress has disciplined its own Members for conduct which has not necessarily violated any specific rule or law, but which was found to breach its privileges, demonstrate contempt for the institution, or which was found to discredit the House or Senate;<sup>10</sup> when the most severe sanction of expulsion has been employed or recommended in the House, however, the conduct has historically involved either disloyalty to the United States Government, or the violation of a criminal law involving the abuse of one's official position, such as bribery.

## Expulsion

Expulsion is the form of action by which the House of Representatives, after a Member has taken the oath of office, removes that Representative from membership in the body by a vote of two-thirds of the Members present and voting.<sup>11</sup> An expulsion is considered a disciplinary matter and a matter of self-protection of the integrity of the institution and its proceedings, and as such is substantively and procedurally different from an "exclusion," which denies a Member-elect his or her

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<sup>8</sup>Rules of the Committee on Standards of Official Conduct, *supra* at Rule 24(g).

<sup>9</sup>*In re Chapman*, 166 U.S. 661, 669-670 (1897); H.R. Rpt. No. 570, 63<sup>rd</sup> Cong., 2d Sess. (1914) (Judiciary Committee), at VI *Cannon's Precedents of the House of Representatives*, § 398, p. 558; Brown, *House Practice, Guide to the Rules, Precedents and Procedures of the House*, 104th Cong., 2d Sess. "Misconduct; Sanctions," at 581-582 (1996). Note authority of Committee on Standards of Official Conduct, Rules of the House of Representatives, Rule XI, para. 3(a)(2), and Code of Official Conduct, Rule XXIII(1).

<sup>10</sup>See Appendix for listing of House disciplinary actions.

<sup>11</sup>Brown, *supra*, "Voting," at p. 908: "A two-thirds vote ordinarily means two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership."

seat by a simple *majority* vote of the body, prior to the Member-elect being seated (or after being seated “without prejudice” pending investigation and resolution of the matter), because of failure of the Member-elect to meet the constitutional qualifications for office (i.e., age, citizenship and inhabitancy in the State from which elected), or because of a failure to have been “duly elected”; “exclusion” is now understood *not* to be a disciplinary procedure.<sup>12</sup> A Member is “expelled” by a two-thirds vote, however, precisely for issues of misconduct, and expulsion is generally taken against a Member after the Member has been sworn into office.

Members of the United States Congress are not removed by way of an “impeachment” procedure in the legislature, as are executive and judicial officers, but are subject to the more simplified and expedited legislative process of expulsion.<sup>13</sup> A removal through an impeachment, it should be noted, requires the action of both Houses of Congress — impeachment in the House and trial and conviction in the Senate. An expulsion, however, is accomplished merely by the House or Senate acting alone concerning one of its own Members, without the consent or action of the other body, and without the constitutional requirement of trial and conviction.<sup>14</sup>

### **Grounds for Expulsion.**

There is no limitation apparent on the face of the Constitution, nor in the deliberations of the Framers, on the authority to expel a Member of Congress, other than the two-thirds vote requirement. One study of the expulsion clause summarized the Framers’ intent as follows:

[From] the history of Article I, Section 5, clause 2, and in particular its course in the Committee of Detail, it is clear that the Framers ... did not intend to impose any limitation on Congressional power to determine what conduct warranted expulsion .... Nor do the debates in the Convention suggest any desire to impose any other substantive restrictions on the expulsion power.<sup>15</sup>

Justice Joseph Story similarly concluded that it would be “difficult to draw a clear line of distinction between the right to inflict the punishment of expulsion, and any other punishment upon a member, founded on the time, place, or nature or the offense,” and that “expulsion may be for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of” a Member.<sup>16</sup>

The Supreme Court of the United States, citing Justice Story’s historic treatise on the Constitution, found an expansive authority and discretion within each House

<sup>12</sup>See *Powell v. McCormack*, 395 U.S. 486, 522 (1969). *Deschler’s Precedents*, *supra* at Ch. 12, §12, p. 169, n. 21.

<sup>13</sup> See case of Senator William Blount of Tennessee, expelled on July 8, 1797; and found not subject to impeachment. III *Hinds’ Precedents*, *supra* at §§ 2294-2318.

<sup>14</sup>II *Hinds’ Precedents*, *supra* at § 1275.

<sup>15</sup>Bowman and Bowman, “Article I, Section 5: Congress’ Power to Expel - An Exercise in Self Restraint,” 29 *Syracuse Law Review* 1071, 1089-1090 (1978).

<sup>16</sup>Story, *supra* at § 836.

of Congress concerning the grounds for expulsion. In *In re Chapman*, the Supreme Court noted the Senate expulsion case of Senator William Blount<sup>17</sup> as supporting the constitutional authority of either House of Congress to punish a Member for conduct which in the judgment of the body “is inconsistent with the trust and duty of a member” even if such conduct was “not a statutable offense nor was it committed in his official character, nor was it committed during the session of Congress, nor at the seat of government.”<sup>18</sup> While each House of Congress has broad authority as to the grounds for an expulsion, this disciplinary action is generally understood to be reserved only for the “most serious violations.”<sup>19</sup> As noted above, expulsions in practice in the House and Senate have traditionally involved conduct which implicated disloyalty to the Union, or the commission of a crime involving the abuse of one's office or authority.

### **Precedents and Practice.**

The House of Representatives has actually expelled only five Members (four Members and one Member-elect) in its history, three of whom were expelled during the Civil War period in 1861 for disloyalty to the Union.<sup>20</sup> The fourth Member of the House to be expelled was Representative Michael J. (Ozzie) Myers, of Pennsylvania, on October 2, 1980, after his bribery conviction for receiving a payment in return for promising to use official influence on immigration bills in the so-called ABSCAM “sting operation” run by the FBI.<sup>21</sup> The fifth and last Member of the House to be expelled was Representative James A. Traficant, Jr., of Ohio, who was expelled on July 24, 2002, after his ten-count federal conviction for activities concerning the receipt of favors, gifts and money in return for performing official acts on behalf of the donors, and the receipt of salary kickbacks from staff.<sup>22</sup>

The numbers of actual expulsions from the House may be small because some Members of the House who have been found to have engaged in serious misconduct have chosen to resign their seats in Congress (or have lost an election) before any formal action could be taken against them by the House. Thus, the House committees investigating allegations of misconduct have from time-to-time expressly recommended the expulsion of a Member, who then resigned from Congress before

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<sup>17</sup>II *Hinds' Precedents*, *supra* at §1263. See footnote 12, *supra*.

<sup>18</sup>166 U.S. 661, 669-670 (1897).

<sup>19</sup>Rules of the House Committee on Standards of Official Conduct, *supra* at Rule 24(g).

<sup>20</sup>See House expulsions of Representative-elect John B. Clark of Missouri (1861), Representative John W. Reid of Missouri (1861), and Representative Henry C. Burnett of Kentucky (1861), for disloyalty to the Union. II *Hinds' Precedents*, *supra* at §§ 1261, 1262.

<sup>21</sup>H.R. Rpt. No. 96-1387, 96<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Michael J. Myers* (1980), 126 *Congressional Record* 28,978 (October 2, 1980). Representative Myers was expelled after conviction for bribery, conspiracy and violation of the Travel Act.

<sup>22</sup>H.R. Rpt. No. 107-594, 107<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative James A. Traficant, Jr.* (2002), 148 *Congressional Record* H5375-5393 (daily ed., July 24, 2002). Representative Traficant was expelled after conviction of conspiracy to violate federal bribery laws, receipt of illegal gratuities, obstruction of justice, conspiracy to defraud the United States, filing false income tax returns, and racketeering.



the expulsion vote could be taken by the full body.<sup>23</sup> Additionally, several other Members of the House who might have been subject to expulsion or other legislative discipline because of misconduct either resigned from Congress *before* any committee recommendation was made,<sup>24</sup> or, soon after their misconduct became known, lost their next election (either the primary or the general election) before congressional action was completed.<sup>25</sup> The defeat at the polls of Members who had engaged in misconduct was precisely the principal “ethics” oversight planned by the Framers of the Constitution, who looked to the necessity of re-election to be the most efficient method of regulating Representatives’ conduct. James Madison explained in the *Federalist Papers* that despite all the precautions taken by structural separation of powers in the Government, or by the institution of the Congress or the law, the best control of Members’ conduct would be their “habitual recollection of their dependence on the people” through the necessity “of frequent elections.”<sup>26</sup>

Although the authority and power of each House of Congress to expel appears to be within the broad discretion of the institution, *policy* considerations, as opposed

<sup>23</sup>Note, e.g., H.R. Rpt. No. 97-110, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess., *In the Matter of Representative Raymond F. Lederer* (1981), and House Committee on Standards recommendation of expulsion for bribery; and H.R. Rpt. No. 100-506, 100<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Mario Biaggi* (1988), recommendation of expulsion after conviction for illegal gratuities, Travel Act violations, and obstruction of justice. Note case of Rep. B.F. Whittemore, recommended for expulsion by Military Affairs Committee for sale of Military Academy appointments, who subsequently resigned in 1870, and who was then censured *in absentia* by the House (II *Hinds’ Precedents*, *supra* at § 1273); and House censure of John DeWeese after his resignation (also for the sale of Academy appointments), but before the committee reported the resolution of expulsion. II *Hinds’ Precedents*, *supra* at § 1239. See also expulsion resolutions, reported from an *ad hoc* committee, for bribery, and subsequent resignations during House consideration of resolutions, by Representatives William Gilbert, Frances Edwards, and Orasmus Matteson, in 1857 (II *Hinds’ Precedents*, *supra* at § 1275).

<sup>24</sup>H.R. Rpt. No. 96-1537, 96<sup>th</sup> Cong., 2d Sess. 10-11, *In the Matter of Representative John W. Jenrette, Jr.* (1980); H.R. Rpt. No. 104-886, 104<sup>th</sup> Cong., 2d Sess. at 19 (1997), *Summary of Activities, One Hundred Fourth Congress* (concerning Representative Mel Reynolds); H.R. Rpt. No. 101-995, 101<sup>st</sup> Cong., 2d Sess. at 10-11 (1990), *Summary of Activities, One Hundred First Congress* (concerning Representative Donald E. Lukens), and 12-13 (concerning Representative Robert Garcia); H.R. Rpt. No. 96-856, 96<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Daniel J. Flood* (1980). Since no recommendation was made by the Committee, it can not be said with certainty what, if any, discipline would have been recommended by the Committee, or approved by the House.

<sup>25</sup>The House Committee on Standards of Official Conduct has found that since it will “lose jurisdiction” over a Member who has been defeated in an election, proceedings which could not be completed prior to the January end-of-term be suspended. Note, for example, H.R. Rpt. No. 105-848, 105<sup>th</sup> Cong., 2d Sess. 14 (1999), *Summary of Activities, One Hundred Fifth Congress* (concerning Representative Jay C. Kim); H.R. Rpt. No. 104-886, *supra* at 21 (concerning Representative Barbara-Rose Collins); see also H.R. Rpt. No. 100-1125, 100<sup>th</sup> Cong., 2d Sess. 17 (1989), *Summary of Activities, One Hundredth Congress* (concerning Rep. Patrick L. Swindall); H.R. Rpt. No. 95-1818, 95<sup>th</sup> Cong., 2d Sess. 3 (1978), *Summary of Activities, Ninety-Fifth Congress* (concerning Rep. Joshua Eilberg).

<sup>26</sup>Madison. *The Federalist Papers*, No. 57: “All these sanctions, however, would be found very insufficient without the restraint of frequent elections ... as to support in the members an habitual recollection of their dependence on the people.”

to questions of *power*, have generally restrained the House in exercising the authority to expel a Member when the conduct complained of occurred prior to the time the individual was elected to be a Member of the House,<sup>27</sup> or when the conduct complained of occurred in a prior Congress when the electorate knew of the conduct but still re-elected the Member to the current Congress. On occasion, this restraint has been characterized, such as in *dicta* by the Supreme Court, as the House's "distrusting" its own "power" to expel for past misconduct.<sup>28</sup> While there has, in fact, in the past been some division of opinion on the subject of the House's constitutional "authority" or "right" to do so,<sup>29</sup> in modern congressional practice it would appear to be more accurate to say that such restraint has arisen from a questioning by the House of the wisdom of such a *policy*, rather than a formal recognition of an absence of constitutional *power* to expel for past misconduct.

The reticence of the House to expel a Member for past misconduct after the Member has been re-elected by his or her constituents, with knowledge of the Member's conduct, appears to reflect the deference traditionally paid in our heritage to the popular will and election choice of the people.<sup>30</sup> Justice Story, while noting the necessity of expulsion of one who "disgrace[d] the house by the grossness of his conduct," noted that such power of the institution of the House to expel a duly-elected representative of the people is "at the same time so subversive of the rights

<sup>27</sup>*Deschler's Precedents, supra* at Ch. 12, § 13, p. 176. See H.R. Rpt. No. 94-1477, 94<sup>th</sup> Cong., 2d Sess. 2, *In the Matter of Representative Andrew J. Hinshaw* (1976). The House Committee on Standards of Official Conduct recommended against expulsion of a Member, since the Member's conviction "while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress."

<sup>28</sup>The Court in *Powell v. McCormack, supra*, in distinguishing the exclusion of Powell from an expulsion, noted that the House has "distrusted" its right to expel Members for prior conduct after they have been reelected (395 U.S. at 508), and that congressional precedents have shown that "the House will not expel a member for misconduct committed during an earlier Congress." 395 U.S. at 509, noting expulsion case of John W. Langley, H.R. Rpt. No. 30, 69<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1-2 (1925). The Court noted specifically, however, that it was not ruling on Congress' authority to expel for past misconduct (395 U.S. at 507, n. 27; 510, n.30), and, in fact, Justice Douglas, in his concurrence noted specifically that "if this were an expulsion case I would think that no justiciable controversy were presented" (395 U.S. at 553), since Douglas agreed with Senator Murdock of Utah in a 1940 exclusion case that each House may "expel anyone it designates by a two-thirds vote." 395 U.S. at 558-559.

<sup>29</sup>Note conflicting opinions of two House committees in the *Credit Mobilier* investigations on the discipline of Representatives Ames and Brooks in the 42<sup>nd</sup> Congress, H.R. Rpt. No. 77, 42<sup>nd</sup> Cong., 3<sup>rd</sup> Sess. (1872) and H.R. Rpt. No. 82, 42<sup>d</sup> Cong., 3<sup>rd</sup> Sess. (1872). The House specifically refused, however, to accept a preamble to the substitute resolution for censure expressly questioning its authority to expel for past misconduct. See Committee Print, *House of Representatives Exclusion, Censure and Expulsion Cases from 1789 to 1973*, 93<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 125 (1973); note also majority and minority opinions in expulsion cases of William S. King and John Schumaker, H.R. Rpt. No. 815, 44<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1876), II *Hinds' Precedents, supra* at §1283, and in expulsion case of Orsamus B. Matteson, H.R. Rpt. No. 179, 35<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1858), II *Hinds' Precedents* § 1285.

<sup>30</sup>See footnote 5, *supra*. Note also discussion of the infamous Wilkes case in England, shortly before the time of the drafting of the United States Constitution. *Powell v. McCormack, supra* at 532-535; May, *supra* at 107.

of the people,” as to require that it be used sparingly and to be “wisely guarded” by a two-thirds requirement.<sup>31</sup> Similarly, Cushing noted that the power to expel “should be governed by the strictest justice,” since in expelling a duly-elected Member without just cause “a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election.”<sup>32</sup>

The distinction between the “power” of the House to expel, and the judicious use of that power as a “policy” of the House, was cogently explained in a House Judiciary Committee report in 1914:

In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them. ...

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of *power*, and it should not be confused with the question of *policy* also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greatest caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its standards and ideals for the standards and ideals of the constituency of the member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.<sup>33</sup>

The power to expel is thus used cautiously when the institution of Congress might be seen as usurping or supplanting its own institutional judgment for the judgment of the electorate as to the character or fitness for office of an individual whom the people have chosen to represent them in Congress.<sup>34</sup> As noted, the principal manner of dealing with ethical improprieties or misconduct of a Representative was intended by the Framers to be, and has historically been, reliance upon the voters to keep their Members “virtuous” through the “restraint of frequent elections.”<sup>35</sup>

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<sup>31</sup>Story, *supra* at § 835.

<sup>32</sup>Cushing, *supra* at § 625; *Deschler's Precedents, supra* at Ch. 12, §13, p. 175.

<sup>33</sup>H.R. Rpt. No. 570, 63rd Cong., 2d Sess. (1914), at VI *Cannon's Precedents, supra* at § 398. Emphasis added.

<sup>34</sup>“Congress has demonstrated a clear reluctance to expel when to do so would impinge ... on the electoral process.” Bowman and Bowman, *supra* at 1101.

<sup>35</sup>Madison, *The Federalist Papers*, No. 57.

## Consequences of Expulsion.

Expulsion from the House of Representatives carries with it no further “automatic” penalties or disabilities beyond removal from Congress. Although the constitutions of some States provide that members expelled from their State legislatures are ineligible to be re-elected to that legislature, no such disability was included in the United States Constitution for Members of Congress. An individual who has been expelled from Congress is *not* ineligible to run again for that seat, or for another position in Congress. The three qualifications for congressional office — age, citizenship, and inhabitancy in the State — are established and fixed in the United States Constitution; are the *exclusive* qualifications to congressional office; and may not be added to or altered by the Congress via a statute or internal congressional rule, or by a state unilaterally.<sup>36</sup> A Member who has been expelled from Congress and subsequently re-elected may, therefore, not be “excluded” from being seated in Congress based merely on the past misconduct and subsequent congressional discipline.<sup>37</sup> Although in theory, a previously expelled Member re-elected to Congress could, after having been seated, be expelled by a two-thirds vote for misconduct, even past misconduct, both the House and the Senate have not, as discussed above, as a practice expelled a Member for past misconduct when the electorate knew of the conduct and still elected or re-elected the Member.

A Member who has been expelled from the House does not lose his or her Federal Government pension automatically by virtue of the expulsion. Rather, Federal Government pensions earned, vested or accumulated by officers and employees, including Members of Congress, are forfeited only upon the conviction of certain federal offenses that relate to espionage, treason, or other specific national security offenses expressly designated in the so-called “Hiss Act.”<sup>38</sup>

## Procedure.

The Supreme Court has also recognized a very broad discretion and authority in each House of Congress to discipline its Members under its own chosen *procedural* standards, generally without established right to judicial review. The act of disciplining Members is carried out through the rule-making authority of the House, and the Supreme Court in describing the congressional disciplinary process in *United States v. Brewster*, has noted in *dicta*:

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<sup>36</sup>*Powell v. McCormack*, *supra*; *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Cook v. Gralike*, 531 U.S. 510 (2001).

<sup>37</sup>See *Powell v. McCormack*, *supra* at 522, 547-550, 537 n. 69. Note discussion by the Court (at 527-536) of the Wilkes case concerning English parliamentary practice at the time of the Constitution’s drafting. If, however, there is alleged disloyalty to the Union, after having taken an oath of office to defend the Constitution, the disqualification provision of the Fourteenth Amendment may come into play. See pre-*Powell*, House of Representatives case of Victor Berger, excluded even after re-election. VI *Cannon's Precedents*, §§ 56, 58, 59.

<sup>38</sup>See now 5 U.S.C. § 8311 *et seq.* The President is not covered by the retirement laws applicable to other officers and employees of the federal government, and forfeiture of retired pay applies in case of impeachment, conviction and removal of the President. See P.L. 85-745, as amended, 3 U.S.C. § 102, note.

The process of disciplining a Member in the Congress ... is not surrounded with the panoply of protective shields that are present in a criminal case. An accused Member is judged by no specifically articulated standards, and is at the mercy of an almost unbridled discretion of the charging body ... from whose decision there is no established right of review.<sup>39</sup>

Currently in the House of Representatives, a resolution to expel a Member would most likely be referred to the House Committee on Standards of Official Conduct, the standing Committee in the House with jurisdiction over congressional conduct and “ethics,” although such a resolution is considered to raise a question of the “privileges” of the House, and could be called up as a privileged resolution with notice by its sponsor according to House Rules.<sup>40</sup> The House Committee on Standards of Official Conduct is also authorized to receive “complaints” concerning a Member’s conduct from any other Member of the House (or from outside of the House when certified by a Member), or may initiate on its own accord an investigation of a Member.<sup>41</sup> Furthermore, the House of Representatives may also, and from time-to-time has, instructed the Committee by resolution to investigate a particular matter or Member.

While it had been a common practice in the past to wait until all appeals were exhausted in a criminal conviction of a Member before the House would proceed on a matter concerning that Member,<sup>42</sup> the more modern practice has been for the House to take cognizance of the underlying *factual* findings regarding the conduct that was the basis for the Member’s conviction, regardless of the potential *legal* or procedural issues which might be resolved on appeal.<sup>43</sup> The rules of the House Committee on Standards of Official Conduct specifically provide, in fact, for automatic jurisdiction of the Committee when a Member has been convicted in a Federal, State, or local court of a felony.<sup>44</sup> Moreover, in one instance, a committee disciplinary proceeding

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<sup>39</sup>408 U.S. 501, 519 (1972). Matters “textually committed” to Congress in the Constitution, such as rules for internal proceedings, might not generally be subject to judicial review unless another, express provision of the Constitution is violated. *Note, e.g., Nixon v. United States*, 506 U.S. 224, 228-229, 236-238 (1993); *United States v. Ballin*, 144 U.S. 1, 5 (1892); *Powell v. McCormack*, *supra* at 519, and 553 (Douglas, J. concurring).

<sup>40</sup>House Rule IX. *Deschler’s Precedents*, *supra*, Ch. 12, § 13, at 176-177; Brown, *supra*, “Misconduct,” § 21. *Note* also H.R. Rpt. No. 94-1477, 94<sup>th</sup> Cong., 2d Sess., at 6, *In the Matter of Representative Andrew J. Hinshaw* (1976). Prior to 1968 when the Committee on Standards of Official Conduct was created as a standing committee of the House, such resolutions would be referred to either *ad hoc* select committees, or to standing committees with other jurisdiction, often the Judiciary Committee.

<sup>41</sup>House Rule XI, para. 3(b)(2). Rules of the Committee on Standards, *supra* Rules 14, 15.

<sup>42</sup>*Deschler’s Precedents*, *supra*, Ch. 12, § 13, at 176.

<sup>43</sup>*Note* discussion in H.R. Rpt. No. 96-1387, *supra* at 4-5; *see* also, generally, CRS Rpt. 88-197A, “House Discipline of Members After Conviction But Before Final Appeal,” March 1, 1988 (archived). A Member convicted of a felony for which the penalty may be two years or more imprisonment, “should refrain” from voting on the floor or in committee until his or her presumption of innocence is restored. House Rule XXIII (10).

<sup>44</sup>Rules of the Committee on Standards, *supra* Rule 14(a)(4), 18(e).

concerning a Member indicted for bribery was begun after the Member's trial, even though it ended in a hung jury, and before a second trial was to commence.<sup>45</sup>

The current Rules of the House of Representatives provide that the House Committee on Standards of Official Conduct is authorized to investigate allegations of violations of “any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member ... in the performance of his duties or the discharge of his responsibilities,” and after such investigation the Committee is to “report to the House its finding of fact and recommendations, if any ....”<sup>46</sup> The Standards Committee has promulgated detailed procedural rules to implement fairness in the disciplinary process, specifically providing the requirements of notice, the specification of charges, and by providing opportunities for the charged Member to be heard and to examine witnesses and evidence. After an investigation by an investigatory subcommittee, the taking of evidence and an adjudicatory hearing, if the Member is found by the majority of the Committee members to have committed the specific offenses charged, the full Committee will then consider the appropriate discipline.<sup>47</sup> If the Committee finds that expulsion is warranted, a recommendation for such discipline is made in a report to the full House of Representatives, which may be, after debate, accepted, modified or rejected by the House.

## Censure

The term “censure,” unlike the term “expel,” does not appear in the Constitution, although the authority is derived from the same clause – Article I, Section 5, clause 2, concerning the authority of each House of Congress to “punish its Members for disorderly Behaviour.” Censure, reprimand, or admonition are traditional ways in which parliamentary bodies have disciplined their members and maintained order and dignity in their proceedings.<sup>48</sup> In the House of Representatives, a “censure” is a formal vote by the majority of Members present and voting on a resolution disapproving a Member’s conduct, with generally the additional requirement that the Member stand at the “well” of the House chamber to receive a verbal rebuke and reading of the censure resolution by the Speaker of the House.

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<sup>45</sup>H.R. Rpt. No. 96-856, 96<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Daniel J. Flood* (1980).

<sup>46</sup>House Rule XI, cl. 3(a)(2).

<sup>47</sup>Investigations subcommittees are 4 Members of the House, and may be made up of Committee Members, as well as Members of the House not on the Committee who are appointed at the beginning of the Congress as a reserve “pool” available to be on investigations subcommittees if needed. Adjudications are held before a panel of the Committee who did *not* serve on the investigations subcommittee, and if any charges drafted by the investigations subcommittee are proven before the adjudications panel, a “sanctions” hearing to determine the sanctions to be recommended to the House is conducted before the full membership of the Standards Committee. House Rule X, cl. 5(a)(3) and (4), XI, cl. 3(b)(1)(B)(i), Rules of the Committee on Standards of Official Conduct, *supra*.

<sup>48</sup>May, *The Law, Privileges, Proceedings and Usage of Parliament*, *supra* at 103; *Black’s Law Dictionary*, at 224, 6<sup>th</sup> Edition (1990), defines “censure” as: “The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct.”

## Grounds.

The Constitution, in providing that either House of Congress may “expel” a Member by a two-thirds majority, does not specify the reasons for such expulsion, but does in that same provision state that either House of Congress may punish its Members for “disorderly Behaviour.” Some early commentators thus felt that the authority to “punish” a Member by way of censure or some other condemnation was thus expressly limited, unlike expulsion, to cases concerning “disorderly” or unruly behavior or conduct in Congress, that is, conduct which disrupts the institution.<sup>49</sup> The authority to discipline by way of censure, reprimand or other such rebuke, however, has come to be recognized and accepted in congressional practice as extending to cases of “misconduct,” even outside of Congress, which the House finds to be reprehensible, and/or to reflect discredit on the institution, and which is, therefore, worthy of condemnation or rebuke.

The House of Representatives has taken a broad view of its authority to discipline its Members. In the 63rd Congress, for example, the House Judiciary Committee described the power of the House to punish for disorderly behavior as a power which is “full and plenary and may be enforced by summary proceedings. It is discretionary in character ... restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.”<sup>50</sup> Similarly, in its report on a Member, a House Select Committee in 1967 stated:

Censure of a Member has been deemed appropriate in cases of a breach of the privileges of the House. There are two classes of privilege, the one, affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and the other, affecting the rights, reputation, and conduct of Members, individually.

Most cases of censure have involved the use of unparliamentary language, assaults upon a Member or insults to the House by introductions of offensive resolutions, but in five cases in the House and one in the Senate [as of 1967] censure was based on corrupt acts by a Member, and in another Senate case censure was based upon noncooperation with and abuse of Senate committees.

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This discretionary power to punish for disorderly behavior is vested by the Constitution in the House of Representatives and its exercise is appropriate where a Member has been guilty of misconduct relating to his official duties, noncooperation with committees of this House, or nonofficial acts of a kind likely to bring this House into disrepute.<sup>51</sup>

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<sup>49</sup>Note, for example, discussion in Bowman and Bowman, *supra* at 1089 - 1091, citing Rawle, *View of the Constitution of United States* 46-47 (2<sup>nd</sup> ed. 1829).

<sup>50</sup>H.R. Rpt. No. 570, 63<sup>rd</sup> Cong., 2d Sess. (1914).

<sup>51</sup>H.R. Rpt. No. 27, 90<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 24-26, 29, *In re Adam Clayton Powell* (1967). The Select Committee recommended to the full House in the 90<sup>th</sup> Congress to seat Mr. Powell, and then to censure him. The House rejected that recommendation, however, and voted to “exclude” Powell, which was ultimately found unconstitutional by the Supreme Court in *Powell v. McCormack*, *supra*, because the House’s action went beyond judging the  
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While the House has stated and demonstrated in precedents its reticence to *expel* a Member for past misconduct, that is, misconduct in a previous Congress which was known to the electorate, the House has had no similar compunction nor has it exercised similar restraint in expressing a formal “censure” of such past misconduct. Thus, a House Select Committee in the 90<sup>th</sup> Congress noted that “the right to *censure* a Member for such prior acts is supported by clear precedent in both Houses of Congress ....”<sup>52</sup> In more recent years the House has adopted in its Rules a “statute of limitations” on actions, restricting the Standards Committee from investigating alleged violations of conduct standards when such violations go back more than the last three Congresses, “unless the Committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.”<sup>53</sup>

### Precedents.

In the House of Representatives there have been 22 “censures” of Members (21 Members and 1 Delegate), including two censures of *former* Members who, in 1870, had resigned just prior to the House’s consideration of expulsion motions against those Members for selling military academy appointments.<sup>54</sup> While the majority of the censures in the House occurred in the 19<sup>th</sup> century and concerned issues of decorum, that is, the use of unparliamentary or insulting language on the floor of the House or acts of violence towards other Members, in more recent years instances of financial misconduct have appeared to have been a major issue. House Members have been censured for various conduct, including insulting or other unparliamentary language on the floor, assaulting another Member, supporting recognition of the Confederacy, the selling of military academy appointments, bribery, payroll fraud where inflated staff salaries were used to pay a Member’s personal expenses, receipt of improper gifts and improper use of campaign funds, and sexual misconduct with House pages.<sup>55</sup>

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<sup>51</sup>(...continued)

three constitutional “qualifications” or the “election” of the Member-elect. Representative Powell was re-elected to and then seated in the 91<sup>st</sup> Congress, but was fined and had his seniority reduced by the House (H.Res. 2, 115 *Congr. Rec.* 29, 34 (January 3, 1969)).

<sup>52</sup>H.R. Rpt. No. 27, *supra* at 27; *see* also censure of Representatives Ames and Brooks in the “Credit Mobilier” bribery matter (1872), for conduct that took place at least five years before their election to the House, and about which the electorate apparently knew, II *Hinds’ Precedents*, *supra* at § 1286; *Deschler’s Precedents*, *supra* at Ch. 12, §16, pp. 194-195; and H.R. Rpt. No. 96-351, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 3-5, *In the Matter of Representative Charles C. Diggs, Jr.* (1979).

<sup>53</sup>House Rule XI, cl. 3(b)(3).

<sup>54</sup>*See* censures of Representatives Whittemore and DeWeese, II *Hinds’ Precedents*, *supra* at §§ 1273, 1239.

<sup>55</sup>*See* Appendix; also, House Committee on Standards of Official Conduct, “Historical Summary of Conduct Cases in the House of Representatives” (November 2004); *House of Representatives Exclusion, Censure and Expulsion Case from 1789 to 1973*, *supra*; and Maskell, “Discipline of Members,” in *The Encyclopedia of the United State Congress*, 641-646 (Simon and Schuster 1993).



## Consequence of Censures.

There is no specific disqualification or express consequence provided in the House Rules after a Member has been “censured.” The political ignominy of being formally and publically admonished and deprecated by one’s colleagues, however, has lead some Members of Congress who face a potential censure or other formal House discipline for certain misconduct to resign before any official recommendation or other action is taken.<sup>56</sup>

While there are no House Rules regarding the consequences of a “censure,” the two political parties in the House themselves have adopted their own internal party rules which in recent years have generally barred from the chairmanship of committees and subcommittees those Members who have been censured during that Congress.<sup>57</sup> Political party rules of the parties in the House may be changed by the particular party caucus or conference itself according to its own rules.

## Reprimand

Prior to the 1970’s in the House of Representatives, although there were some inconsistencies,<sup>58</sup> the terms “reprimand” and “censure” were often considered synonymous and used together in a resolution. In 1921, for example, a resolution adopted by the House instructed the Speaker to summon Representative Blanton of Texas to the bar of the House “and deliver to him its reprimand and censure.”<sup>59</sup>

The more formalized distinction in the House whereby it is considered that a “reprimand” expressly involves a lesser level of disapproval of the conduct of a Member than that of a “censure,” and is thus a less severe rebuke by the institution,<sup>60</sup> is of relatively recent origin. The term “reprimand” was used to explicitly indicate a less severe rebuke by the House in 1976 in the reprimand of a Member for his failure to disclose certain personal interests in official matters, and for the apparent use of his office to further his own personal financial interests.<sup>61</sup> Procedurally in the

<sup>56</sup>See footnote 22, *supra*. Other Members have also lost their next election before any House action is completed. See footnote 23, *supra*. As noted, since no recommendation is made by the House Committee on Standards or other committee investigating these matters, it can not be said with certainty what, if any, discipline would have been recommended by the committees, or approved by the House.

<sup>57</sup>See, for example, House Democratic Caucus Rule 51 (1997); House Republican Conference Rule 27 (1997).

<sup>58</sup>Note II *Hinds' Precedents*, *supra* at § 1257 (47<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1882)); II *Hinds' Precedents*, *supra* at § 1666 (39<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1866)).

<sup>59</sup>VI *Cannon's Precedents*, *supra* at §236 (67<sup>th</sup> Cong., 1<sup>st</sup> Sess.).

<sup>60</sup>*Deschler's Precedents*, *supra* at Ch. 12, § 16, p. 196 (“a somewhat lesser punitive measure than censure”); see also Cushing, *supra* at pp. 266-269, for historical context. See now House Committee on Standards of Official Conduct Rules, *supra* at Rule 24(g).

<sup>61</sup>H.R. Rpt. No. 94-1364, 94<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Robert L.F. Sikes* (1976). No recommendation for punishment was made for an “obvious and significant  
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House, a “censure” resolution will generally involve a verbal admonition, such as a reading of the resolution, to be administered by the Speaker of the House to the Member at the bar of the House. In the case of a “reprimand,” however, the resolution is merely adopted by a vote of the House with the Member “standing in his place,” or is merely implemented by the adoption of the committee’s report.<sup>62</sup>

Eight House Members have been “reprimanded” by the full House for a variety of misconduct, including failure to disclose certain personal interests in official matters and using one’s office to further personal financial interests; misrepresentations to investigating committees; failure to report campaign contributions; conversion of campaign contributions to personal use and false statements before the investigating committee; false statements on financial disclosure forms; ghost voting and maintaining persons on the official payroll not performing official duties commensurate with pay; the misuse of one’s political influence in administrative matters to help a personal associate; and the failure to insure that a Member-affiliated tax-exempt organization was not improperly involved in partisan politics, and for providing inaccurate, incomplete and unreliable information to the investigating committee.<sup>63</sup>

Upon making a report recommending to the House a “censure” or a “reprimand,” the House Committee on Standards of Official Conduct may also include in that report a recommendation for an additional action such as a fine, a restitution or payment of funds, or recommendations for the loss of seniority or privileges, when such actions are deemed appropriate.

## **Fines; Monetary Assessments**

In addition to more traditional disciplines of censure, reprimand or expulsion, the House of Representatives as an institution has the authority to levy a fine against a Member of the House concerning a disciplinary matter. This authority appears to be incidental to the express constitutional grant of power to the House to determine the rules of its proceedings and to punish its Members for misconduct. *Deschler’s Precedents* states expressly that under the constitutional authority of the House at Article I, Section 5, clause 2: “A fine may be levied by the House against a Member pursuant to its constitutional authority to punish its Members.”<sup>64</sup> The House Committee on Standards notes expressly in its Committee Rules that sanctions that it may recommend to the House concerning a Member may include expulsion, censure, reprimand, denial or limitation of any right, privilege or immunity of the

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<sup>61</sup>(...continued)

conflict of interest” – a significant ownership interest in land directly impacted by legislation the Member sponsored, since the “events occurred approximately 15 years ago and ... appear to have been known to [his] constituency ....” *Id.* at 4-5.

<sup>62</sup>*Deschler’s Precedents, supra* at Ch. 12, § 16, p. 196.

<sup>63</sup>See Appendix.

<sup>64</sup>*Deschler’s Precedents, supra* at Ch. 12, § 17, p. 203. *Note, Cushing, supra* at § 675.

Member, or a “fine.”<sup>65</sup> The authority for each House of Congress to fine one of its own Members was recognized by the Supreme Court in *dicta* in *Kilbourn v. Thompson*,<sup>66</sup> where the Court noted that “either House” of Congress has “the power of punishment ... by fine or imprisonment,” relating to areas where Congress has been expressly granted authority, such as where the “Constitution expressly empowers each House to punish its own Members for disorderly behavior.”<sup>67</sup>

Fines for disciplinary purposes in the House, as well as in the Senate,<sup>68</sup> have been relatively infrequent occurrences.<sup>69</sup> The precedents in the House have demonstrated that the House fined a Member in 1969 the sum of \$25,000 to be repaid by automatically withdrawing a certain amount regularly from his pay, for various conduct offenses, including the misuse of official committee appropriations, payroll, and expenses.<sup>70</sup> A Member of the House who was censured in 1979 was required to “make restitution of substantial amounts by which he was unjustly enriched,” that is, the Member was expressly ordered within the resolution of censure to pay to the House a specific amount by executing an interest-bearing demand promissory note for \$40,031.66, made payable to the Treasury of the United States.<sup>71</sup>

At other times the House pursuant to disciplinary actions required certain monetary assessments of Members of Congress which were not expressly or necessarily characterized as “fines.” A Member of Congress, pursuant to a formal “reprimand” was required to make restitution to the District of Columbia of certain monies and fines, concerning which he had improperly used his influence to have

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<sup>65</sup>Committee on Standards of Official Conduct, Rule 24(e)(4).

<sup>66</sup>103 U.S. 168 (1880).

<sup>67</sup>103 U.S. at 189, 190. There is no known case of a congressional imprisonment of a Member in the history of Congress. *See* discussion in *United States v. Traficant*, 368 F.3d 646, 651 (6<sup>th</sup> Cir. 2004): “Congress has not done so, even once, dating back to the year 1787.”

<sup>68</sup>In the Senate, in a 1990 disciplinary matter in which a Senator was “denounced” by the full Senate, for example, the Senator was ordered to “reimburse” the Senate a specified amount in connection with questionable expense reimbursements received from the Senate, and “to pay to charities with which he has no affiliation” an amount equal to that which was considered as “excess honoraria” over and above that which the Senator was permitted to accept. S. Rpt. No. 101-382, 101<sup>st</sup> Cong., 2d Sess., 14-15 (1990).

<sup>69</sup>Studies have noted that prior to 1969, no Members of the House had ever been fined for disciplinary reasons. McLaughlin, “Congressional Self-Discipline: The Power to Expel, Exclude and to Punish,” 41 *Fordham L.R.* 43, 61 (Oct. 1972). There had in the 1800's been a few instances noted in precedents where the House authorized fines for absences, or as a condition for discharge. *Note*, IV *Hinds' Precedents*, *supra* at §§ 3011-3014.

<sup>70</sup>H. Res. 2, 91<sup>st</sup> Cong., 1<sup>st</sup> Sess., *In the Matter of Representative Adam Clayton Powell* (1969), note *Deschler's Precedents*, *supra* at Ch. 12, §17, pp. 203-204. The Sergeant at Arms was directed to deduct \$1,150 a month from the Member's salary.

<sup>71</sup>H.R. Rpt. No. 96-351, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 20, *In the Matter of Representative Charles Diggs, Jr.* (1979).

“fixed” or reduced.<sup>72</sup> In 1997, a monetary assessment or penalty, which was not characterized by the Committee as a “fine,” was imposed upon the Speaker of the House to pay “for some of the costs” of an ethics investigation which resulted in the reprimand of the Speaker.<sup>73</sup>

The “fines” and/or monetary assessments ordered in the disciplinary cases appear to involve the repayment or restitution of funds misused or wrongfully received, as opposed to fines merely or strictly for “punishment” purposes and not necessarily connected to the wrongful conduct. This is consistent with the current guidance in the House Committee on Standards of Official Conduct Rules concerning the recommendation of a “fine,” which the Committee notes, “is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit.”<sup>74</sup> There does not appear to be, however, a constitutional or institutional *requirement* for such fines to be so connected with unjust enrichments or misuse of funds, and the Committee on Standards has noted in its Rules that the guidance concerning fines and other sanctions recommended to the House “sets forth general guidelines and does not limit the authority of the Committee to recommend other sanctions.”<sup>75</sup>

## Suspension

Although a temporary “suspension” is traditionally listed as one of the possible disciplinary actions that a legislative body may take against one of its members,<sup>76</sup> the House of Representatives has in recent years questioned its authority to disqualify or mandatorily suspend a Member by a simple majority vote.<sup>77</sup> Such a “suspension” would most likely involve a prohibition on a Member of the House from voting on or working on legislative or representational matters for a particular time. Although not addressing a “suspension” specifically, the House has generally considered a decision of a Member not to vote on a matter as within the discretionary purview of the Member individually under House Rule III(1), even when a legislative matter may involve possible conflicting personal interests. As noted by the House, its authority to require a Member to disqualify himself or herself from voting has traditionally been questioned, and such “recusal” has therefore been traditionally left to the discretion of the Member. *Jefferson's Manual and Rules of the House of Representatives*, at §658, states:

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<sup>72</sup>H.R. Rpt. No. 101-610, 101<sup>st</sup> Cong., 2d Sess., *In the Matter of Representative Barney Frank* (1990).

<sup>73</sup>H.R. Rpt. No. 105 - 1, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 3, *In the Matter of Representative Newt Gingrich* (1997).

<sup>74</sup>House Committee on Standards of Official Conduct, Rule 24(g).

<sup>75</sup>*Id.*

<sup>76</sup>Cushing, *supra*, at section 627, p. 251.

<sup>77</sup>*Jefferson's Manual and Rules of the House of Representatives*, §658. *Deschler's Precedents, supra* at Ch. 12, § 15, p. 187.

[T]he weight of authority also favors the idea that there is no authority in the House to deprive a Member of the right to vote (V, 5937, 5952, 5959, 5966, 5967; VIII, 3072). In one or two early instances the Speaker has decided that because of a personal interest, a Member should not vote (V, 5955, 5958); but on all other occasions and in the later practice the Speaker has held that the Member himself and not the Chair should determine this question (V, 5950, 5951; VIII, 3071; Speaker Albert, Dec. 2, 1975, p. 38135; Speaker O'Neill, Mar. 1, 1979, p. 3748), and the Speaker has denied his own power to deprive a Member of the constitutional right to vote (V, 5956; Speaker Albert, Dec. 2, 1975, p. 38135; Speaker O'Neill, Mar. 1, 1979, p. 3748).<sup>78</sup>

As to refraining from voting and committee work specifically, the House of Representatives in the 94th Congress adopted a rule which stated a sense of the House that Members who have been convicted of a crime for which a sentence of two or more years may be imposed “should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House ...” until there has been a judicial or administrative reinstatement of his or her presumption of innocence, or until the Member is re-elected.<sup>79</sup> The supporters of the provision noted that the rule was worded in the *discretionary* way it was because, they believed, that if the provision were mandatory, then “it would have been unconstitutional [because] [i]t would have deprived the district, which the Member was elected to represent, of representation....”<sup>80</sup>

Although the Rule on refraining from voting is couched in what can be considered advisory terms of guidance to Members, the Rules of the House also provide, in the Code of Official Conduct, that Members of the House “shall adhere to the spirit and the letter of the Rules of the House.”<sup>81</sup> Members are thus expected to conform to and abide by the abstention provision.<sup>82</sup>

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<sup>78</sup>Citations are to volumes of *Hinds' and Cannon's Precedents of the United States House of Representatives*, and to the relevant sections.

<sup>79</sup>See now, House Rule XXIII (10); note H.R. Rpt. No. 93-616, 93rd Cong., 1st Sess. (1973).

<sup>80</sup>121 *Congressional Record* 10341, April 16, 1975, colloquy between Representatives Robert Eckhardt and John J. Flynt of Texas.

<sup>81</sup>House Rule XXIII(2); note comments on passage of abstention rule by Representatives Edwards and Drinan, 121 *Congressional Record*, *supra* at 10343-10345, and discussion in *Deschler's Precedents*, Ch. 12, § 15 (1977).

<sup>82</sup>The Committee in 1993 noted in its report that although there is no “specific enforcement capability” expressed in the proposed rule, “any Member subject to its provisions at the time of the resolution’s adoption, or thereafter, who violates the clear principles it expresses, will do so at the risk of subjecting himself to the introduction of a privileged resolution relating to his conduct ....” H.R. Rpt. No. 93-616, *supra* at 4. Note, Washington Post, “Under Colleagues’ Pressure, Biaggi Refrains from Voting,” October 22, 1987. See also House Committee on Standards of Official Conduct, “Dear Colleague” letter from the Chairman and Vice Chairman, April 15, 2002, warning Member convicted of felony violations that “by voting in the House – you risk subjecting yourself to action by this Committee, and by the House, in addition to any other disciplinary action that may be initiated in connection with your criminal conviction.”

## Letters of Reproval and Other Committee Actions

In the House of Representatives a “Letter of Reproval” is an administrative action of the House Committee on Standards of Official Conduct, authorized under the Rules of the House of Representatives “to establish or enforce standards of official conduct for members, officers, and employees of the House.”<sup>83</sup> The issuance of a Letter of Reproval by the Committee is made public, as it is issued as part of a public report from the Committee to the House on an investigation that the House Committee on Standards of Official Conduct has undertaken.<sup>84</sup>

A Letter of Reproval may be sent by the Committee on Standards of Official Conduct on its own accord by majority vote of the Committee, without any approval or action by the full House of Representatives.<sup>85</sup> As such, a Letter of Reproval is clearly distinguishable from legislative “discipline,” “punishment” or “sanctions” that the full House may invoke against a Member, such as censure, reprimand, fine, or expulsion.<sup>86</sup> It appears that a Letter of Reproval is intended to be an action by the Committee which is an alternative to the recommendation of sanctions to the House, and is an action which is used for infractions of Rules or standards which, because of the nature of the infractions or because of mitigating circumstances, do not rise to the level of requiring action by the full House of Representatives. The Committee on Standards of Official Conduct Rules provide, after setting out procedures when “a majority of the Committee does not vote in favor of the recommendation that the House of Representatives take action,” that “The Committee may also, by majority vote, adopt a motion to issue a Letter of Reproval or take other appropriate Committee action.”<sup>87</sup> The Committee may issue such Letter “[i]f the Committee determines a Letter of Reproval constitutes sufficient action ...”<sup>88</sup> The Committee procedural rules appear to indicate that such a “Letter of Reproval” may be sent only after an investigation by an investigatory subcommittee has resulted in the issuance of a Statement of Alleged Violations, at least one count of which has been proved by an adjudicatory subcommittee, and upon completion of a sanction hearing.<sup>89</sup>

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<sup>83</sup>House Rule XI, para. 3(a)(1).

<sup>84</sup>House Rule XI, para. 3(a)(1) provides that a “letter of reproval or other administrative action of the committee pursuant to an investigation ... shall only be issued ... as part of a report required” under subparagraph (2) of the Rule. Subparagraph (2) states that the Committee on Standards “shall report to the House its findings of fact and recommendations, if any, upon the final disposition of any such investigation, and such action as the committee may deem appropriate in the circumstances.” House Rule XI, para. 3(a)(2).

<sup>85</sup>House Rule XI, para.3(a)(1); Committee on Standards Rule 24(c).

<sup>86</sup>A Letter of Reproval is not one of the “sanctions” recommended to the House, listed in the Committee Rules at Rule 24(e).

<sup>87</sup>Committee Rule 24(c).

<sup>88</sup>Committee Rule 24(d).

<sup>89</sup>Committee Rule 24(b),(c) and (d).

A Letter of Repeval was characterized by the House Committee on Standards as a “rebuke of a Member’s conduct issued by a body of that Member’s peers acting, as the Committee on Standards of Official Conduct, on behalf of the House of Representatives.”<sup>90</sup> The Committee on Standards of Official Conduct has issued several Letters of Repeval to Members of the House, including Letters of Repeval for the improper use of campaign accounts for personal loans;<sup>91</sup> for a Member’s borrowing of campaign funds for personal use, and a subsequent “inadequate” disclosure of such transaction;<sup>92</sup> and concerning allegations of sexual harassment of a female employee, and the use of one’s office for political campaign activity.<sup>93</sup> In October of 2000, after a lengthy investigation of a Member, the Committee issued a Letter of Repeval for actions for which the Member was found to have “brought discredit to the House of Representatives,” including a relationship with a former chief of staff which gave the appearance that official decisions might have been improperly affected, violations of the House gift rule, misuse of official congressional resources, misuse of official congressional staff for campaign purposes, and the appearance that certain expenditures of the Member’s campaign committee were not for bona fide campaign or political purposes.<sup>94</sup> In June of 2001 the Committee issued a Letter of Repeval to a Member for the improper expenditure of campaign funds to benefit businesses in which the Member and his family had a personal stake, and for the improper conversion of campaign funds to personal uses.<sup>95</sup>

In addition to a formal, public “Letter of Repeval,” the Committee has addressed ethical issues before it concerning allegations of misconduct by Members by way of “other appropriate Committee action,” upon agreement of a majority of the Committee, when an investigation is undertaken by a subcommittee but the

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<sup>90</sup>H.R. Rpt. No. 106-979, 106<sup>th</sup> Cong., 2d Sess., at p. 3J, *In the Matter of Representative E.G. “Bud” Shuster* (2000).

<sup>91</sup>H.R. Rpt. No. 100-382, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 5, 6, *In the Matter of Representative Richard H. Stallings* (1987). The Committee recommended against sanctions by the full House because of several “mitigating” factors, including “no evidence of improper intent” of the Member either to conceal the activity or to violate the provisions of the Rule as the loans were fully reported on required disclosures, and the voluntary “corrective action” on the Member’s own initiative once the Member became aware of the violations.

<sup>92</sup>H.R. Rpt. No. 100-526, 100<sup>th</sup> Cong., 2d Sess., *In the Matter of Representative Charles G. Rose III* (1988). The Committee cited “mitigating circumstances which prevent these violations from rising to the level of a recommendation of sanction to the full House,” and commended the “positive action taken” by the Member. *Id.* at 26.

<sup>93</sup>H.R. Rpt. No. 101-293, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., *In the Matter of Representative Jim Bates* (1989). The Committee initiated a Preliminary Inquiry and the Member waived his rights to a Statement of Alleged Violations and a disciplinary hearing. The Committee noted that since the Member had taken steps to assure no repeat of the offending conduct, was being directed to specifically issue apologies to the affected employees, and that since any inappropriate campaign activities were “sporadic” and not on-going, that “the better course is to formally and publicly reprove” the Member. *Id.* at 13-14.

<sup>94</sup>H.R. Rpt. No. 106-979, 106<sup>th</sup> Cong., 2d Sess., at pp. 3D-3E, *In the Matter of Representative E.G. “Bud” Shuster* (2000).

<sup>95</sup>H.R. Rpt. No. 107-130, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess., *In the Matter of Representative Earl F. Hilliard* (2001).

recommendation of sanctions to the full House is not made.<sup>96</sup> Such actions by the full Committee have included writing a letter to a Member concerning “necessary corrective action” that should be taken by the Member, or by noting “poor judgment” and the creation of an “appearance of impropriety.”<sup>97</sup> The Committee has also noted violations of House Rules or standards, has “so notified” the Member, and found that no further action by the Committee will be taken.<sup>98</sup> In 1990 the Committee made a public report concerning a Member’s conduct, noting that the “Committee clearly disapproves” of the Member’s conduct.<sup>99</sup> In 2004, after an investigation by an investigatory subcommittee, the full Committee issued a report which “will serve as a public admonishment by the Committee” of three Members.<sup>100</sup>

The House Committee on Standards of Official Conduct has characterized actions such as these generally by stating that the Committee “has noted infractions not meriting sanctions ....”<sup>101</sup> Such informal notifications, public reports, public admonishments, or letters for corrective action, thus may be distinguished from those instances when the Committee “formally and publicly reprov[ed]” a Member by way of a formal “Letter of Repr[ov]al,”<sup>102</sup> although it may be argued that these other Committee actions are to some degree comparable since they are all “administrative action[s]” taken by the Committee itself “pursuant to an investigation” that had been conducted by an investigative subcommittee of the Committee on Standards of Official Conduct.<sup>103</sup>

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<sup>96</sup>Committee Rule 24(c).

<sup>97</sup>See H.R. Rpt. No. 101-995, 101<sup>st</sup> Cong., 2d Sess. at 8, *Summary of Activities, One Hundred First Congress* (1990); H.R. Rpt. No. 106-1044, 106<sup>th</sup> Cong., 2d Sess. 11-12 (2001).

<sup>98</sup>H.R. Rpt. No. 104-401, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 2, 4-5, *Inquiry Into Various Complaints Filed Against Representative Newt Gingrich* (1995).

<sup>99</sup>H.R. Rpt. No. 101-397, 101<sup>st</sup> Cong., 2d Sess., at 2, 14, *In the Matter of Representative Gus Savage* (1990).

<sup>100</sup>H. R. Rpt. No. 108-722, 108<sup>th</sup> Cong., 2d Sess. (2004) 2, “Investigation of Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003,” concerning allegations of trading votes on a Medicare measure in return for political support of a Member’s relative.

<sup>101</sup>*House Ethics Manual*, 102d Cong., 2d Sess., at 11 (1992).

<sup>102</sup>Compare Committee descriptions at H.R. Rpt. No. 101-995, *supra* at 8, and 9; note *House Ethics Manual*, *supra* at 11.

<sup>103</sup>As noted, House Rules provide that a “letter of reprov[al] or other administrative action of the Committee” may be invoked “pursuant to an investigation.” House Rule XI, para. 3(a)(1); Committee Rule 24(c), (d). These other actions, however, do not necessarily require the adoption or proof of a Statement of Alleged Violations. See, for example, Committee Rule 19(g).



The Committee has also sent a so-called “letter of admonition” to a Member against whom a complaint was filed by another Member of the House,<sup>104</sup> which was apparently different from, and was not technically, an action to provide a “Letter of Reprimand” or even any other “administrative” action “pursuant to an investigation” by an investigatory subcommittee of the Committee.<sup>105</sup> The “letter of admonition” in this case was rather a method of disposing of a complaint by the Committee upon the recommendation of the Chairman and Ranking Minority Member of the Committee for a “resolution of the complaint by a letter to the Member ... against whom the complaint is made,”<sup>106</sup> without moving forward with an investigation by an investigatory subcommittee.

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<sup>104</sup>See Statement of the Committee on Standards of Official Conduct, October 6, 2004; Memorandum to the Members of the Committee, from the Chairman and Ranking Minority Member, “Recommendations for disposition of the complaint filed against Representative DeLay,” and “Dear Colleague” letter to Member, October 6, 2004.

<sup>105</sup>As noted, a “Letter of Reprimand” or other Committee action would appear to come only after an investigatory subcommittee had been convened and had issued a report to the full Committee on Standards of Official Conduct. A Letter of Reprimand could follow when a Statement of Alleged Violations is adopted and proved or admitted, and the full Committee had then decided by majority vote to “adopt a motion to issue a Letter of Reprimand” as sufficient action in lieu of House action (Committee Rule 24(b),(c)), while other administrative action could apparently be provided by the Committee pursuant to an investigation.

<sup>106</sup>Committee Rule 16(b), (c).

## APPENDIX: Disciplinary Actions Taken by the Full House Against a Member

### Table I. Censure

<b>Date</b>	<b>Member of Congress</b>	<b>Conduct</b>
1. July 11, 1832	William Stanberry (Ohio)	Insulting the Speaker of the House.
2. March 22, 1842	Joshua R. Giddings (Ohio)	Resolution introduced by Member relating to delicate international negotiations deemed “incendiary.”
3. July 15, 1856	Lawrence M. Keitt (S.C.)	Assisting in assault on a Member.
4. April 9, 1864	Benjamin G. Harris (Md.)	Treasonous conduct in opposing subjugation of the South.
5. April 14, 1864	Alexander Long (Ohio)	Supporting recognition of the Confederacy.
6. May 14, 1866	John W. Chanler (N.Y.)	Insulting the House by introduction of resolution containing unparliamentary language.
7. July 24, 1866	Lovell H. Rousseau (Ky.)	Assault of another Member.
8. Jan. 26, 1867	John W. Hunter (N.Y.)	Unparliamentary language.
9. Jan. 15, 1868	Fernando Wood (N.Y.)	Unparliamentary language.
10. Feb. 14, 1869	Edward D. Holbrook (Idaho)	Unparliamentary language.
11. Feb. 24, 1870	Benjamin Whittemore (S.C.)	Selling military academy appointments (Member had resigned before expulsion, and was “condemned” by House).
12. March 1, 1870	John T. DeWeese (S.C.)	Selling military academy appointments (Member had resigned before expulsion, and was “condemned” by House).
13. March 16, 1870	Roderick R. Butler (Tenn.)	Accepting money for “political purposes” in return for Academy appointment.
14. Feb. 27, 1873	Oakes Ames (Mass.)	Bribery in “Credit Mobilier” case. (Conduct prior to election to House.)
15. Feb. 27, 1873	James Brooks (N.Y.)	Bribery in “Credit Mobilier” case. (Conduct prior to election to House.)
16. Feb. 4, 1875	John Y. Brown (Ky.)	Unparliamentary language.
17. May 17, 1890	William D. Bynum (Ind.)	Unparliamentary language.
18. Oct. 27, 1921	Thomas L. Blanton (Tex.)	Unparliamentary language.
19. July 31, 1979	Charles C. Diggs (Mich.)	Payroll fraud, 18 U.S.C. §1001 conviction.
20. June 6, 1980	Charles H. Wilson (Cal.)	Receipt of improper gifts; “ghost” employees; improper personal use of campaign funds.
21. July 20, 1983	Gerry E. Studds (Mass.)	Sexual misconduct with House page.
22. July 20, 1983	Daniel B. Crane (Ill.)	Sexual misconduct with House page.

**Table II. Reprimand**

<b>Date</b>	<b>Member of Congress</b>	<b>Conduct</b>
1. July 29, 1976	Robert L.F. Sykes (Fla.)	Use of office for personal gain; failure to disclose interest in legislation.
2. Oct. 13, 1978	Charles H. Wilson (Cal.)	False statement before Standards of Official Conduct Committee investigating Korean influence matter.
3. October 13, 1978	John J. McFall (Cal.)	Failure to report campaign contributions from Korean lobbyist.
4. October 13, 1978	Edward J. Roybal (Cal.)	Failure to report campaign contributions; false sworn statement before Standards of Official Conduct Committee investigating Korean influence matter.
5. July 31, 1984	George V. Hansen (Idaho)	False statements on financial disclosure form; conviction under 18 U.S.C. §1001 for such false statements.
6. Dec. 18, 1987	Austin J. Murphy (Pa.)	Ghost voting (allowing another person to cast his vote); maintaining on his payroll persons not performing official duties commensurate with pay.
7. July 26, 1990	Barney Frank (Mass.)	Using political influence to fix parking tickets, and to influence probation officers for personal friend.
8. January 21, 1997	Newt Gingrich (Ga.)	Allowing a Member-affiliated tax-exempt organization to be used for political purposes; providing inaccurate, and unreliable information to the ethics committee.

**Table III. Expulsion**

<b>Date</b>	<b>Member of Congress</b>	<b>Conduct</b>
1. July 13, 1861	John B. Clark (Mo.)	Disloyalty to the Union - taking up arms against the United States.
2. December 2, 1861	John W. Reid (Mo.)	Disloyalty to the Union - taking up arms against the United States.
3. December 3, 1861	Henry C. Burnett (Ky.)	Disloyalty to the Union - taking up arms against the United States.
4. October 2, 1980	Michael J. Myers (Pa.)	Bribery conviction for accepting money in return for promise to use influence in immigration matters.
5. July 24, 2002	James A. Traficant (Ohio)	Conviction of conspiracy to commit bribery and to defraud U.S., receipt of illegal gratuities, obstruction of justice, filing false tax returns and racketeering, in connection with receipt of favors and money in return for official acts, and receipt of salary kickbacks from staff.