§ 1. The preamble.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

§ 2. Formation of the Constitution.

The First Continental Congress met in Philadelphia in September of 1774 and adopted the Declaration and Resolves of the First Continental Congress, embodying rights and principles later to be incorporated into the Constitution of the United States. The Second Continental Congress adopted in November of 1777 the Articles of Confederation, which the States approved in July, 1778. Upon recommendation of the Continental Congress, a convention of State representatives met in May, 1787 to revise the Articles of Confederation and reported to the Continental Congress in September a new Constitution, which the Congress submitted to the States for ratification. Nine States, as required by the Constitution for its establishment, had ratified by June 21, 1788, and eleven States had ratified by July 26, 1788. The Continental Congress adopted a resolution on September 13, 1788, putting the new Constitution into effect; the First Congress of the United States convened on March 4, 1789, and George Washington was inaugurated as the first President on April 30, 1789.

ARTICLE I.

§ 3. Legislative powers vested in Congress.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 4. Power to investigate.

The power to legislate includes the power to conduct inquiries and investigations. See Kilbourn *v.* Thompson, 103 U.S. 168 (1881); McGrain *v.* Daugherty, 273 U.S. 135 (1927); Watkins *v.* United States, 354 U.S. 178 (1957); Barenblatt *v.* United States, 360 U.S. 109 (1959). For the power of the House to punish for contempt in the course of investigations, see § 293, *infra*.

§ 5. Members chosen by the people of the States every second year.

SECTION 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *.

This clause requires election by the people and State authority may not determine a tie by lot (I, 775).

The phrase "by the people of the several States" means that as nearly as practicable one person's vote in a congressional election is to be worth as much as another's. Wesberry *v.* Sanders, 376 U.S. 1 (1964); Kirkpatrick *v.* Preisler, 385 U.S. 450 (1967). 2 U.S.C. 2a mandates apportionment of Representatives based upon population, and 2 U.S.C. 2c requires the establishment by the States of single-Member congressional districts. For elections generally, see Deschler, ch. 8.

§ 6. Term of a Congress.

The term of a Congress, before the ratification of the 20th amendment to the Constitution, began on the 4th of March of the odd numbered years and extended through two years. This resulted from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, "the first Wednesday in March next" to be "the time for commencing proceedings under the said Constitution." This date was the 4th of March, 1789. Soon after the first Congress assembled a joint committee determined that the terms of Representatives and Senators of the first class commenced on that day, and must necessarily terminate with the 3d of March, 1791 (I, 3). Under the 20th amendment to the Constitution the terms of Representatives and Senators begin on the 3d of January of the odd-numbered years, regardless of when Congress actually convenes. By a practice having the force of common law, the House meets at noon when no other hour is fixed (I, 4, 210). In the later practice a resolution fixing the daily hour of meeting at noon or some other hour is agreed to at the beginning of each session.

Before adoption of the 20th amendment, the legislative day of March 3 extended to noon on March 4 (V, 6694–6697) and, unless earlier adjourned, the Speaker could at that time declare the House adjourned sine die, without motion or vote, even to the point of suspending a roll call then in progress (V, 6715–6718).

The Legislative Reorganization Act of 1970 (84 Stat. 1140) provides that unless Congress otherwise specifies the two Houses shall adjourn sine die not later than the last day in July. This requirement is not applicable, under the terms of that Act, where a state of war exists pursuant to a congressional declaration or where, in an odd-numbered (nonelection) year, the Congress has agreed to adjourn for the month preceding Labor Day. For more on this provision, see § 1105, *infra*.

§ 7. Electors of the House of Representatives.

* * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

The House, in the decision of an election case, has rejected votes cast by persons not naturalized citizens of the United States, although they were entitled to vote under the statutes of a State (I, 811); but where an act of Congress had provided that a certain class of persons should be deprived of citizenship, a question arose over the proposed rejection of their votes in a State wherein citizenship in the United States was not a qualification of the elector (I, 451). In an exceptional case the House rejected votes cast by persons lately in armed resistance to the Government, although by the law of the State they were qualified voters (I, 448); but later, the House declined to find persons disqualified as voters because they had formerly borne arms against the Government (II, 879).

§ 8. Decisions of the Court.

The power of the States to set qualifications for electors is not unlimited, being subject to the 15th, 19th, 24th, and 26th amendments, and to the equal protection clause of the United States Constitution. Carrington *v.* Rash, 380 U.S. 89 (1965); Kramer *v.* Union Free School District, 395 U.S. 621 (1969).

Congress has some power in setting qualifications for electors, as in protecting the right to vote and lowering the minimum age for electors in congressional elections. Katzenbach *v.* Morgan, 384 U.S. 641 (1966); Oregon *v.* Mitchell, 400 U.S. 112 (1970).

§ 9. Age as a qualification of the Representative.

2 No Person shall be a Representative who shall not have attained to the Age of twenty five Years, * * *.

A Member-elect not being of the required age, was not enrolled by the Clerk and he did not take the oath until he had reached the required age (I, 418).

§ 10. Citizenship as a qualification of the Member.

* * * and been seven Years a Citizen of the United States, * * *.

Henry Ellenbogen, Pa., had not been a citizen for seven years when elected to the 73d Congress, nor when the term commenced on March 4, 1933. He was sworn at the beginning of the second session on January 3, 1934, when a citizen for seven and one-half years (see H. Rept. 1431 and H. Res. 370, 73d Cong.). A native of South Carolina who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A woman who forfeited her citizenship through marriage to a foreign subject and later resumed it through naturalization less than seven years before her election, was held to fulfill the constitutional requirement as to citizenship and entitled to a seat in the House (VI, 184). A Member who had long been a resident of the country, but who could not produce either the record of the court nor his final naturalization papers, was nevertheless retained in his seat by the House (I, 424).

§ 11. Inhabitancy as a qualification of the Member.

* * * and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The meaning of the word “inhabitant” and its relation to citizenship has been discussed (I, 366, 434; VI, 174), and the House has held that a mere sojourner in a State was not qualified as an inhabitant (I, 369), but a contestant was found to be an actual inhabitant of the State although for sufficient reason his family resided in another State (II, 1091). Residence abroad in the service of the Government does not destroy inhabitancy as understood under the Constitution (I, 433). One holding an office and residing with his family for a series of years in the District of Columbia exclusively was held disqualified to sit as a Member from the State of his citizenship (I, 434); and one who had his business and a residence in the District of Columbia and had no business or residence in Virginia was held ineligible to a seat from that State (I, 436). One who had a home in the District of Columbia, and had inhabited another home in Maryland a brief period before his election, but had never been a citizen of any other State, was held to be qualified (I, 432). Also a Member who had resided a portion of a year in the District of Columbia, but who had a home in the State of his citizenship and was actually living there at the time of the election, was held to be qualified (I, 435). In the Updike *v.* Ludlow case, 71st Congress, it was decided that residence in the District of Columbia for years as a newspaper correspondent and maintenance there of church membership were not considered to outweigh payment of poll and income taxes, ownership of real estate, and a record for consistent voting in the district from which elected (VI, 55), and in the same case excuse from jury duty in the District of Columbia on a plea of citizenship in the State from which elected and exercise of incidental rights of such citizenship, were accepted as evidence of inhabitancy (VI, 55).

§ 12. Qualifications other than those specified by the Constitution.

Whether Congress may by law establish qualifications other than those prescribed by the Constitution has been the subject of much discussion (I, 449, 451, 457, 458, 478); but in a case wherein a statute declared a Senator convicted of a certain offense "forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States," the Supreme Court expressed the opinion that the final judgment of conviction did not operate, ipso facto, to vacate the seat or compel the Senate to expel or regard the Senator as expelled by force alone of the judgment (II, 1282). Whether the House or Senate alone may set up qualifications other than those of the Constitution has also been a subject often discussed (I, 414, 415, 443, 457, 458, 469, 481, 484). The Senate has always declined to act on the supposition that it had such a power (I, 443, 483), and during the stress of civil war the House of Representatives declined to exercise the power, even under circumstances of great provocation (I, 449, 465). But later, in one instance, the House excluded a Member-elect on the principal argument that it might itself prescribe a qualification not specified in the Constitution (I, 477). The matter was extensively debated in the 90th Congress in connection with the consideration of resolutions relating to the seating of Representative-elect Adam C. Powell of New York (H. Res. 1, Jan. 10, 1967, p. 14; H. Res. 278, Mar. 1, 1967, p. 4997).

The exclusion of Mr. Powell was the subject of litigation reaching the Supreme Court of the United States. In Powell *v.* McCormack, 395 U.S. 486 (1969), the Court found that the power of Congress to judge the qualifications of its Members was limited to an examination of the express qualifications stated in the Constitution.

It has been decided by the House and Senate that no State may add to the qualifications prescribed by the Constitution (I, 414–416, 632); and the Supreme Court so ruled in U.S. Term Limits, Inc., *v.* Thorton, 63 U.S.L.W. 4413 (1995). There, the Court held that States may not "change, add to, or diminish" constitutional qualifications of Members, striking down a State statute prohibiting three-term incumbents from appearing on the general election ballot. For qualifications generally, see Deschler, ch. 7, §§ 9–14.

For expulsion of seated Members, which requires a two-thirds vote rather than a majority vote, see article I, section 5, clause 2 (§ 62, *infra*).

§ 13. Minority candidate not seated when returned Member is disqualified.

Both Houses of Congress have decided, when a Member-elect is found to be disqualified, that the person receiving the next highest number of votes is not entitled to the seat (I, 323, 326, 450, 463, 469; VI, 58, 59), even in a case wherein reasonable notice of the disqualification was given to the electors (I, 460). In the event of the death of a Member-elect, the candidate receiving the next highest number of votes is not entitled to the seat (VI, 152).

§ 14. The old provision for apportionment of Representatives and direct taxes.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] * * *

The part of this clause relating to the mode of apportionment of Representatives was changed after the Civil War by section 2 of the 14th amendment and, as to taxes on incomes without apportionment, by the 16th amendment.

§ 15. Census as a basis of apportionment.

* * * The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland

six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The census has been taken decennially since 1790, and, with the exception of 1920, was followed each time by reapportionment. In the First Congress the House had 65 Members; increased after each census, except that of 1840, until 435 was reached in 1913 (VI, 39, 40). The Act of June 18, 1929 (46 Stat. 26), as amended by the Act of November 15, 1941 (55 Stat. 761), provides for reapportionment of the existing number (435) among the States following each new census (VI, 41–43; see 2 U.S.C. 2a). Membership was temporarily increased to 436, then to 437, upon admission of Alaska (72 Stat. 345) and Hawaii (73 Stat. 8), but returned to 435 on January 3, 1963, the effective date of the reapportionment under the 18th Decennial census.

Under the later but not the earlier practice, bills relating to the census and apportionment are not privileged for consideration (I, 305–308; VI, 48, VII, 889; Apr. 8, 1926, p. 7147).

§ 16. Decisions of the Court.

Decisions of the Supreme Court of the United States: Dred Scott *v.* Sandford, 19 Howard, 393; Veazie Bank *v.* Fenno, 8 Wall., 533; Scholey *v.* Rew, 23 Wall., 331; De Treville *v.* Smalls, 98 U.S. 517; Gibbons *v.* District of Columbia, 116 U.S. 404; Pollock *v.* Farmers Loan & Trust Co. (Income Tax case), 157 U.S. 429; Pollock *v.* Farmers' Loan & Trust Co. (Rehearing), 158 U.S. 601; Thomas *v.* United States, 192 U.S. 363; Flint *v.* Stone Tracy Co., 220 U.S. 107; Corporation Tax cases, 220 U.S. 107; Eisner *v.* Macomber, 252 U.S. 189; New York Trust Co. *v.* Eisner, 256 U.S. 345; Franklin *v.* Massachusetts, 505 U.S. 788 (1992); Utah *v.* Evans, 536 U.S. 452 (2002).

§ 17. Writs for elections to vacancies in representation.

4 When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Vacancies are caused by death, resignation, declination, withdrawal, or by action of the House in declaring a vacancy as existing or causing one by expulsion. When a vacancy occurs, or when a new Member is sworn, the Speaker announces the resulting adjustment in the whole number of the House pursuant to clause 5(d) of rule XX (see § 1024b, *infra*). Clause 5(c) of rule XX permits the House to operate with a provisional number of the House where the House is without a quorum due to catastrophic circumstances (see § 1024a, *infra*). In extraordinary circumstances, section 8 of title 2, United States Code, prescribes special election rules to expedite the filling of vacancies in representation of the House.

§ 18. Vacancy from death.

It was long the practice to notify the executive of the State when a vacancy was caused by the death of a Member during a session (II, 1198–1202); but since improvements in transportation have made it possible for deceased Members to be buried at their homes it has been the practice for State authorities to take cognizance of the vacancies without notice. When a Member dies while not in attendance on the House or during a recess the House is sufficiently informed of the vacancy by the credentials of his successor, when they set forth the fact of the death (I, 568). The death of a Member-elect creates a vacancy, although no certificate may have been awarded (I, 323), and in such a case the candidate having the next highest number of votes may not receive the credentials (I, 323; VI 152). A Member whose seat was contested having died, the House did not admit a claimant with credentials until contestant's claim was settled (I, 326); where a contestant died after a report in his favor, the House unseated the returned Member and declared the seat vacant (II, 965), and in a later case the contestant having died, the committee did not recommend to the House a resolution it had agreed to declaring he had not been elected (VI, 112). In the 93d Congress, when two Members-elect were passengers on a missing aircraft and were presumed dead, the Speaker laid before the House documentary evidence of the presumptive death of one Member-elect and the declaration of a vacancy by the Governor, as well as evidence that the status of the other Member-elect had not been officially determined by State authority. The House then adopted a privileged resolution declaring vacant the seat of the latter Member-elect to enable the Governor of that State to call a special election (Jan. 3, 1973, p. 15). For further discussion, see § 23, *infra*.

§ 19. Vacancy from resignation.

In recent practice the Member frequently informs the House by letter that his resignation has been sent to the State executive (II, 1167–1176) and this is satisfactory evidence of the resignation (I, 567). However, Members have resigned by letter to the House alone, it being presumed that the Member would also notify his Governor (VI, 226). Where a Member resigned by letter to the House the Speaker was authorized to notify the Governor (Nov. 27, 1944, p. 8450; July 12, 1957, p. 11536; Sept. 1, 1976, p. 28887). Where a Member does not inform the House, the State executive may do so (II, 1193, 1194; VI, 232). The House has, on occasion, learned of a Member's resignation by means of the credentials of his successor (II, 1195, 1356). Where the fact of a Member's resignation has not appeared either from the credentials of his successor or otherwise, the Clerk has been ordered to make inquiry (II, 1209) or the House has ascertained the vacancy from information given by other Members (II, 1208).

It has been established that a Member or Senator may resign, appointing a future date for his resignation to take effect, and until the arrival of the date may participate in the proceedings (II, 1220–1225, 1228, 1229; VI, 227, 228; Dec. 15, 1997, p. 26709; June 5, 2001, p. 9882; Nov. 27, 2001, p. 23006; Jan. 27, 2003, pp. 1750, 1751). It has been possible even for a Member to resign a seat in the House to be effective on a date following the anticipated date of a special election that might fill the vacancy thereby created (Deschler, ch. 8, § 9.3). However, the State concerned must be willing to treat the prospective resignation as a Constitutional predicate for the issuance of a writ of election to fill a vacancy. For examples of resignation letters indicating that the Executive of the State took cognizance of a prospective resignation, see, January 8, 1952, (p. 14) (New York); July 9, 1991, (p. 17301) (Virginia); June 5, 2001, (p. 9882) (Florida), and Jan. 27, 2003, (p. 1751) (Texas). When the Governor of Oklahoma received a prospective resignation from one of its Members, the State provided by statute (enrolled Senate Bill Number 7X) for the holding of a special election before the effective date of the resignation (Feb. 28, 2002, p. 2245)).

For the State to take cognizance of a prospective resignation, it must have assurances that there is no possibility of withdrawal (or modification). In one case a Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213). However, the House has allowed withdrawal in the case of defective resignation; that is, where the Member had not actually transmitted the letter of resignation (VI, 229), or had transmitted it to an improper state official (Oct. 9, 1997, p. 22020). A Member may include in a letter of prospective resignation a statement of intention that the resignation be "irrevocable" in order to allay any concern about the prospect of withdrawal (June 5, 2001, p. 9882).

Acceptance of the resignation of a Member of the House is unnecessary (VI, 65, 226), and the refusal of a Governor to accept a resignation cannot operate to continue membership in the House (VI, 65). Only in a single exceptional case has the House taken action in the direction of accepting a resignation (II, 1214). Sometimes Members who have resigned have been reelected to the same House and taken seats (II, 1210, 1212, 1256; Jan. 28, 1965 and June 16, 1965, pp. 1452, 13774; Jan. 6, 1983 and Feb. 22, 1983, pp. 114, 2575). A Member who has not taken his seat resigned (II, 1231).

A letter of resignation is presented as privileged (II, 1167–1176); but a resolution to permit a Member to withdraw his resignation was not so treated (II, 1213). The Speaker having been elected Vice President and a Representative of the succeeding Congress at the same election, transmitted to the Governor of his State his resignation as a Member-elect (VI, 230, 453). A Member of the House having been nominated and confirmed as Vice President pursuant to the 25th amendment, submitted a letter of resignation as a Representative to the Governor of his State, and a copy of his letter of resignation was laid before the House by the Speaker following the completion of a joint meeting for his swearing as Vice President (Dec. 6, 1973, p. 39927). A Member of the House having been confirmed as Secretary of Defense, a copy of his letter of resignation was laid before the House before his taking the oath of that office (Mar. 20, 1989, p. 4976).

§ 20. Vacancy from declination.

A Member who has been elected to a seat may decline to accept it, and in such a case the House informed the executive of the State of the vacancy (II, 1234). The House has decided an election contest against a returned Member who had not appeared to claim the seat (I, 638). In one instance a Member-elect who had been convicted in the courts did not appear during the term (IV, 4484, footnote). On November 7, 1998, less than a week after his re-election as Representative from the 6th district of Georgia, Speaker Gingrich announced that he would not be a candidate for Speaker in the 106th Congress and that he would resign his seat as a Member of the 106th Congress. Although the letter of "withdrawal" was tendered on November 22, the Governor did not attempt to call a special election until after the term began on January 3, 1999 (Jan. 6, 1999, p. 42).

§ 21. Vacancy by withdrawal.

At the time of the secession of several States, Members of the House from those States withdrew (II, 1218). In the Senate, in cases of such withdrawals, the Secretary was directed to omit the names of the Senators from the roll (II, 1219), and the act of withdrawal was held to create a vacancy that the legislature might recognize (I, 383).

§ 22. Vacancy by action of the House.

Where the House, by its action in a question of election or otherwise, creates a vacancy, the Speaker is directed to notify the Executive of the State (I, 502, 709, 824; II, 1203–1205; Mar. 1, 1967, p. 5038; Jan. 3, 1973, p. 15; Feb. 24, 1981, pp. 2916–18). A resolution as to such notification is presented as a question of privilege (III, 2589), as is a resolution declaring a vacancy where a Member-elect was unable to take the oath of office or to resign because of an incapacitating illness (Feb. 24, 1981, pp. 2916–18).

§ 23. Questions as to the existence of a vacancy.

The House declines to give prima facie effect to credentials, even though they be regular in form, until it has ascertained whether or not the seat is vacant (I, 322, 518, 565, 569), and a person returned as elected at a second election was unseated on ascertainment that another person had actually been chosen at the first election (I, 646). Where a Member was reelected to the House, although at the time of the election he had been unaccounted for for several weeks following the disappearance of the plane on which he was a passenger, the Governor of the State from which he was elected transmitted his certificate to the House in the regular fashion. When the Member-elect was still missing at the time the new Congress convened, and circumstances were such that other passengers on the missing plane had been presumed dead following judicial inquiries in the State where the plane was lost, the House declared the seat vacant (H. Res. 1, 93d Cong., Jan. 3, 1973, p. 15). In the 108th Congress the House codified in clause 5 of rule XX its practice of accounting for vacancies (sec. 2(l), H. Res. 5, Jan. 7, 2003, p. 7).

The term “vacancy” as occurring in this paragraph of the Constitution has been examined in relation to the functions of the State executive (I, 312, 518). A Federal law empowers the States and Territories to provide by law the times of elections to fill vacancies (I, 516; 2 U.S.C. 8); but an election called by a governor in pursuance of constitutional authority was held valid although no State law prescribed time, place, or manner of such election (I, 517). Where two candidates had an equal number of votes, the governor did not issue credentials to either, but ordered a new election after they had waived their respective claims (I, 555). A candidate elected for the 104th Congress was appointed by the Governor to fill a vacancy for the remainder of the 103d Congress pursuant to a State law requiring the Governor to appoint the candidate who won the election to the 104th Congress. In that case the House authorized the Speaker to administer the oath to the Member-elect and referred the question of his final right to the seat in the 103d Congress to the Committee on House Administration (Nov. 29, 1994, pp. 29585, 29586). For a discussion of a State election to fill a prospective vacancy of the House, see § 19.

§24. Functions of the State executive in filling vacancies.

§25. Term of a Member elected to fill a vacancy.

A Member elected to fill a vacancy serves no longer time than the remainder of the term of the Member whose place he fills (I, 3). For the compensation and allowances of such Members, see § 87, *infra*.

§26. House chooses the Speaker and other officers.

[5] The House of Representatives shall chuse their Speaker and other Officers; * * *

The officers of the House are the Speaker, who has always been one of its Members and whose term as Speaker must expire with his term as a Member; and the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain (I, 187), no one of whom has ever been chosen from the sitting membership of the House and who continue in office until their successors are chosen and qualified (I, 187). In one case the officers continued through the entire Congress succeeding that in which they were elected (I, 244, 263). Former officers include Doorkeeper (abolished by the 104th Congress, see § 663a, *infra*) and Postmaster (abolished during the 102d Congress, see § 668, *infra*). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244). Currently, certain statutes impose on the officers duties that contemplate their continuance (I, 14, 15; 2 U.S.C. 75a–1, 83).

§27. Election of a Speaker.

The Speaker, who was at first elected by ballot, has been chosen viva voce by surname in response to a call of the roll since 1839 (I, 187). The Speaker is elected by a majority of Members-elect voting by surname, a quorum being present (I, 216; VI, 24; Jan. 7, 1997, p. 117). The Clerk appoints tellers for this election (I, 217). Ultimately, the House, and not the Clerk, decides by what method it shall elect the Speaker (I, 210). On two occasions, by special rules, Speakers were chosen by a plurality of votes; but in each case the House by majority vote adopted a resolution declaring the result (I, 221, 222). The House has declined to choose a Speaker by lot (I, 221).

The motion to proceed to the election of a Speaker is privileged (I, 212, 214; VIII, 3883), and debatable unless the previous question is ordered (I, 213). Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115). On several occasions the choice of a Speaker has been delayed for several weeks by contests (I, 222; V, 5356, 6647, 6649; VI, 24). The contest over the election of a Speaker in 1923 was resolved after a procedure for the adoption of rules for the 68th Congress had been presented (VI, 24). In 1860 the voting for Speaker proceeded slowly, being interspersed with debate (I, 223), and in one instance the House asked candidates for Speaker to state their views before proceeding to election (I, 218).

§ 28. Vacancies in the Office of Speaker.

A proposition to elect a Speaker is in order at any time a vacancy exists and presents a question of the highest privilege (VIII, 3383). Upon a vacancy in the Office of Speaker, the House elects a new Speaker either viva voce following nominations (in the case where a Speaker has died between sessions of Congress or resigned) or by resolution (in the case where a Speaker has died during a session of Congress). For example, in the case where the Speaker had died between sessions of Congress, the Clerk at the next session called the House to order, ascertained the presence of a quorum, and then the House proceeded to elect a successor viva voce following nominations (I, 234; Jan. 10, 1962, p. 5). In a case where the Speaker died during a session of Congress, but not while the House was sitting, the Clerk on the following day called the House to order and the Speaker's successor was elected by resolution (June 4, 1936, p. 9016; Sept. 16, 1940, p. 12231). In a case where the Speaker resigned "on the election of my successor" (May 31, 1989, p. 10440), he entertained nominations for Speaker and, following the roll call, declared the winner of the election "duly elected Speaker" (June 6, 1989, p. 10801). In one instance a Speaker resigned on the last day of the Congress, and the House unanimously adopted a motion to elect a successor for the day (I, 225).

Form of resolution offered on death of a Speaker (Sept. 16, 1940, p. 12232; Jan. 10, 1962, p. 9) and of a former Speaker (VIII, 3564; Mar. 7, 1968, p. 5742; H. Res. 328, Jan. 25, 1994, p. 89; H. Res. 418, Feb. 8, 2000, p. 834). A resolution declaring vacant the Office of Speaker is presented as a matter of high constitutional privilege (VI, 35). Speakers have resigned by rising in their place and addressing the House (I, 231, 233), by calling a Member to the Chair and tendering the resignation verbally from the floor (I, 225), by tendering the resignation during recognition under a question of personal privilege (May 31, 1989, p. 10440), or by sending a letter that the Clerk reads to the House at the beginning of a new session (I, 232). When the Speaker resigns no action of the House excusing him from service is taken (I, 232). Instance wherein the Speaker, following a vote upon an essential question indicating a change in the party control of the House, announced that under the circumstances it was incumbent upon the Speaker to resign or to recognize for a motion declaring vacant the Office of Speaker (VI, 35). In the 108th Congress the House adopted clause 8(b)(3) of rule I, under which the Speaker is required to deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker (sec. 2(a), H. Res. 5, Jan. 7, 2003, p. 7). The Speaker delivered to the Clerk the first such letter on February 10, 2003 (Mar. 13, 2003, p. 6118).

§29. Power of House to elect its officers as related to law.

The effect of a law to regulate the action of the House in choosing its own officers has been discussed (IV, 3819), and such a law has been considered of doubtful validity (V, 6765, 6766) in theory and practice (I, 241, 242). The Legislative Reorganization Act of 1946 (2 U.S.C. 75a–1) authorizes the Speaker to fill temporary vacancies in the offices of Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain. For a history of the Speaker's exercise of such authority, see §640, *infra;* and, for further information on the elections of officers, see Deschler, ch. 6.

§30. Election of Clerk in relation to business.

It has been held that the Act of June 1, 1789 (2 U.S.C. 25) bound the House to elect a Clerk before proceeding to business (I, 237, 241). In some instances the House has proceeded to legislation and other busines before electing a Clerk (I, 242, 244). When a vacancy arises in the office of Clerk during a session, business has intervened before the election of a new Clerk (I, 239).

§31. House of Representatives alone impeaches.

* * * and [the House of Representatives] shall have the sole Power of Impeachment.

In 1868 the Senate ceased in its rules to describe the House, acting in an impeachment, as the "grand inquest of the nation" (III, 2126). See also art. II, sec. 4 (§173, *infra*); Deschler, ch. 14.

A Federal court having subpoenaed certain evidence gathered by a committee of the House in an impeachment inquiry, the House adopted a resolution granting such limited access to the evidence as would not infringe upon its sole power of impeachment (Aug. 22, 1974, p. 30047).

Until the law expired on June 30, 1999, an independent counsel was required to advise the House of any substantial and credible information that may constitute grounds for impeachment of an officer under his investigation (28 U.S.C. 595(c)). For a description of impeachment proceedings prompted by a communication from an independent counsel, see § 176, *infra*.

SECTION 3. [1] [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

§ 32. Numbers, terms, and votes of Senators.

This provision was changed by the 17th amendment.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

§ 33. Division of the Senate into classes.

§ 34. Filling of vacancies in the Senate.

That part of the above paragraph in brackets was changed by the 17th amendment.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

§ 35. Qualifications of Senators.

In 1794 the Senate decided that Albert Gallatin was disqualified, not having been a citizen nine years although he had served in the war of Independence and was a resident of the country when the Constitution was formed (I, 428); and in 1849 that James Shields was disqualified, not having been a citizen for the required time (I, 429). But in 1870 the Senate declined to examine as to H. R. Revels, a citizen under the recently adopted 14th amendment (I, 430). As to inhabitancy the Senate seated one who, being a citizen of the United States, had been an inhabitant of the State from which he was appointed for less than a year (I, 437). Also one who, while stationed in a State as an army officer had declared his intention of making his home in the State, was admitted by the Senate (I, 438). A Senator who at the time of his election was actually residing in the District of Columbia as an officeholder, but who voted in his old home and had no intent of making the District his domicile, was held to be qualified (I, 439).

§ 36. The Vice President and his vote.

4 The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The right of the Vice President to vote has been construed to extend to questions relating to the organization of the Senate (V, 5975), as the election of officers of the Senate (V, 5972–5974), or a decision on the title of a claimant to a seat (V, 5976, 5977). The Senate has declined to make a rule relating to the vote of the Vice President (V, 5974).

§ 37. Choice of President pro tempore and other officers of the Senate.

5 The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

In the 107th Congress the Senate elected two Presidents of the Senate pro tempore for different periods when the majority of the Senate shifted after inauguration of the Vice President (S. Res. 3, Jan. 3, 2001, p. 7).

§ 38. Senate tries impeachment and convicts by two-thirds vote.

6 The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted

without the Concurrence of two thirds of the Members present.

For the exclusive power of the Senate to try impeachments under the United States Constitution, see Ritter *v.* United States, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937). See also Mississippi *v.* Johnson, 71 U.S. (4 Wall.) 475 (1867) (dictum). For the nonjusticiability of a claim that Senate Rule XI violates the impeachment trial clause by delegating to a committee of 12 Senators the responsibility to receive evidence, hear testimony, and report to the Senate thereon, see Nixon *v.* United States, 506 U.S. 224 (1993). For a discussion of Senate impeachment procedures, see §§ 608–20, *infra*.

§ 41. Judgment in cases of impeachment.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

There has been discussion as to whether or not the Constitution requires both removal and disqualification on conviction (III, 2397); but in the case of Pickering, the Senate decreed only removal (III, 2341). In the case of Humphreys, judgment of both removal and disqualification was pronounced (III, 2397). In the Ritter case, it was first held that upon conviction of the respondent, judgment of removal required no vote, following automatically from conviction under article II, section 4 (Apr. 17, 1936, p. 5607). In the 99th Congress, having tried to conviction the first impeachment case against a Federal district judge since 1936, the Senate ordered his removal from office (Oct. 9, 1986, p. 29870). In the 101st Congress, two other Federal district judges were removed from office following their convictions in the Senate (Oct. 20, 1989, p. 25335; Nov. 3, 1989, p. 27101). For a further discussion of judgments in cases of impeachment, see § 619, *infra*.

§ 42. Times, places, and manner of elections of Representatives and Senators.

SECTION 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

The relative powers of the Congress and the States under this graph have been the subject of much discussion (I, 311, 313, 507, footnote); but Congress has in fact fixed by law the time of elections (I, 508; VI, 66; 2 U.S.C. 7), and has controlled the manner to the extent of prescribing a ballot or voting machine (II, 961; VI, 150; 2 U.S.C. 9). When a State delegated to a municipality the power to regulate the manner of holding an election, a question arose (II, 975). A question has arisen as to whether or not a State, in the absence of action by Congress, might make the time of election of Congressmen contingent on the time of the State election (I, 522). This paragraph gives Congress the power to protect the right to vote in primaries where they are an integral part of the election process. United States *v.* Wurzbach, 280 U.S. 396 (1930); United States *v.* Classic, 313 U.S. 299 (1941). Congress may legislate under this paragraph to protect the exercise of the franchise in congressional elections. Ex parte Siebolt, 100 U.S. 371 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884).

§43. Functions of a State legislature in fixing time, etc., of elections.

The meaning of the word "legislature" in this clause of the Constitution has been the subject of discussion (II, 856), as to whether or not it means a constitutional convention as well as a legislature in the commonly accepted meaning of the word (I, 524). The House has sworn in Members chosen at an election the time, etc., of which was fixed by the schedule of a constitution adopted on that election day (I, 519, 520, 522). But the House held that where a legislature has been in existence a constitutional convention might not exercise the power (I, 363, 367). It has been argued generally that the legislature derives the power herein discussed from the Federal and not the State Constitution (II, 856, 947), and therefore that the State constitution might not in this respect control the State legislature (II, 1133). The House has sustained this view by its action (I, 525). But where the State constitution fixed a date for an election and the legislature had not acted, although it had the opportunity, the House held the election valid (II, 846). Title III of the Legislative Branch Appropriations Act, 2006, amended Federal election law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance that vacancies in representation from the States exceed 100 (P.L. 109–55; 2 U.S.C. 8).

§44. Decisions of the Court.

Decisions of the Supreme Court of the United States: Ex parte Siebold, 100 U.S. 371 (1880); Ex parte Clark, 100 U.S. 399 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884); In re Coy, 127 U.S. 731 (1888); Ohio *v.* Hildebrant, 241 U.S. 565 (1916); United States *v.* Mosley, 238 U.S. 383 (1915); United States *v.* Gradwell, 243 U.S. 476 (1917); Newberry *v.* United States, 256

U.S. 232 (1921); Smiley *v.* Holme, 285 U.S. 355 (1932); United States *v.* Classic, 313 U.S. 299 (1941); Smith *v.* Allwright, 321 U.S. 649 (1944); Roudebush *v.* Hartke, 405 U.S. 15 (1972); Storer *v.* Brown, 415 U.S. 724 (1974); Buckley *v.* Valeo, 424 U.S. 1 (1976); U.S. Term Limits, Inc., *v.* Thorton, 514 U.S. 779 (1995); and Foster *v.* Love, 522 U.S. 67 (1997). In Public Law 91–285, Congress lowered the minimum age of voters in all Federal, State, and local elections from 21 to 18 years. In Oregon *v.* Mitchell, 400 U.S. 112 (1970), the Supreme Court upheld the power of Congress under article I, section 4 and under section 5 of the 14th amendment to the Constitution to fix the age of voters in Federal elections, but held that the tenth amendment to the Constitution reserved to the States the power to establish voter age qualifications in State and local elections. The 26th amendment to the Constitution extended the right of persons 18 years of age or older to vote in elections held under State authority.

§ 45. Annual meeting of Congress.

2 [The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.]

This provision has been superseded by the 20th amendment.

In the later but not the earlier practice (I, 5), before the 20th amendment, the fact that Congress had met once within the year did not make uncertain the constitutional mandate to meet on the first Monday of December (I, 6, 9–11). Early Congresses, convened either by proclamation or law on a day earlier than the constitutional day, remained in continuous session to a time beyond that day (I, 6, 9–11). But in the later view an existing session ends with the day appointed by the Constitution for the regular annual session (II, 1160); see § 84, *infra*. Congress has frequently appointed by law a day for the meeting (I, 4, 5, 10–12, footnote; see also § 243, *infra*).

§ 46. House the judge of elections, returns, and qualifications.

SECTION 5. 1 Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, * * *.

In judging the qualifications of its Members, the House may not add qualifications to those expressly stated in the United States Constitution. Powell *v.* McCormack, 395 U.S. 486 (1969). This phrase allows the House or Senate to deny the right to a seat without unlawfully depriving a State of its right to equal representation. Barry *v.* United States ex rel Cunningham, 279 U.S. 597 (1929). But a State may conduct a recount of votes without interfering with the authority of the House under this phrase. Roudebush *v.* Hartke, 405 U.S. 15 (1972). For discussion of the power of the House to judge elections, see Deschler, ch. 8 (elections) and ch. 9 (election contests); for discussion of the power of the House to judge qualifications, see Deschler, ch. 7.

The House has the same authority to determine the right of a Delegate to his seat that it has in the case of a Member (I, 423). The House may not delegate the duty of judging its elections to another tribunal (I, 608), and the courts of a State have nothing to do with it (II, 959). The House has once examined the relations of this power to the power to expel (I, 469).

§ 47. Power of judging as related to State laws as to returns.

As nearly all the laws governing the elections of Representatives in Congress are State laws, questions have often arisen as to the relation of this power of judging to those laws (I, 637). The House decided very early that the certificate of a State executive issued in strict accordance with State law does not prevent examination of the votes by the House and a reversal of the return (I, 637). The House has also held that it is not confined to the conclusions of returns made up in strict conformity to State law, but may examine the votes and correct the returns (I, 774); and the fact that a State law gives canvassers the right to reject votes for fraud and irregularities does not preclude the House from going behind the returns (II, 887). The highest court in one State (Colorado) has ruled that it lacked jurisdiction to pass upon a candidate's allegations of irregularities in a primary election and that the House had exclusive jurisdiction to decide such questions and to declare the rightful nominee (Sept. 23, 1970, p. 33320).

§ 48. Power of judging as related to State laws as to acts of the voter.

When the question concerns not the acts of returning officers, but the act of the voter in giving his vote, the House has found more difficulty in determining on the proper exercise of its constitutional power. While the House has always acted on the principle of giving expression to the intent of the voter (I, 575, 639, 641; II, 1090), yet it has held that a mandatory State law, even though arbitrary, may cause the rejection of a ballot on which the intent of the voter is plain (II, 1009, 1056, 1077, 1078, 1091). See Deschler, ch. 8, § 8.11, for discussion of distinction between directory State laws governing the conduct of election officials as to ballots, and mandatory laws regulating the conduct of voters.

§ 49. Power of House as related to constitutionality of State laws.

Where the State courts have upheld a State election law as constitutional the House does not ordinarily question the law (II, 856, 1071). But where there has been no such decision the House, in determining its election cases, has passed on the validity of State laws under State constitutions (II, 1011, 1134), and has acted on its decision that they were unconstitutional (II, 1075, 1126), but it is not the policy of the House to pass upon the validity of State election laws alleged to be in conflict with the State constitution (VI, 151).

§ 50. Effect of interpretation of State election laws by State courts.

The courts of a State have nothing to do directly with judging the elections, qualifications, and returns of Representatives in Congress (II, 959), but where the highest State court has interpreted the State law the House has concluded that it should generally be governed by this interpretation (I, 645, 731; II, 1041, 1048), but does not consider itself bound by such interpretations (VI, 58). The House is not bound, however, by a decision on an analogous but not the identical question in issue (II, 909); and where the alleged fraud of election judges was in issue, the acquittal of those judges in the courts was held not to be an adjudication binding on the House (II, 1019). For a recent illustration of a protracted election dispute lasting four months see House Report 99–58, culminating in House Resolution 146 of the 99th Congress (May 1, 1985, p. 9998).

§ 51. Laws of Congress not binding on the House in its function of judging its elections.

The statutes of the United States provide specific methods for institution of a contest as to the title to a seat in the House (I, 678, 697–706) (2 U.S.C. 381–396); but the House regards this law as not of absolute binding force, but rather a wholesome rule not to be departed from except for cause (I, 597, 719, 825, 833), and it sometimes by resolution modifies the procedure prescribed by the law (I, 449, 600).

§ 51a. Decisions of the Court.

Decisions of the Supreme Court of the United States: In re Loney, 134 U.S. 317 (1890); Reed *v.* County Commissioners, 277 U.S. 376 (1928); Barry *v.* United States ex rel. Cunningham, 279 U.S. 597 (1929); Roudebush *v.* Hartke, 405 U.S. 15 (1972).

§ 52. The quorum.

* * * and a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

§ 53. Interpretation of the Constitution as to number constituting a quorum.

Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constituted the quorum required by the Constitution (IV, 2885–2888); but later examination has resulted in a decision confirming in the House of Representatives the construction established in the Senate that a quorum consists of a majority of Senators duly chosen and sworn (I, 630; IV, 2891–2894). So the decision of the House now is that after the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House (IV, 2889, 2890; VI, 638). Under clause

5(d) of rule XX, when a vacancy occurs or when a new Member is sworn, the Speaker announces the resulting adjustment in the whole number of the House (see § 1024b, *infra*). Under clause 5(c) of rule XX, the House may establish a provisional number of the House where, due to catastrophic circumstances, a quorum fails to appear (sec. 2(h), H. Res. 5, Jan. 4, 2005, p. ——; see § 1024a, *infra*).

§ 54. The theory of the quorum present; and the count by the Speaker.

For many years a quorum was determined only by noting the number of Members voting (IV, 2896, 2897), with the result that Members by refusing to vote could often break a quorum and obstruct the public business (II, 1034; IV, 2895, footnote; V, 5744). However, in 1890 Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members present but not voting, thereby establishing a quorum of record (IV, 2895). This decision, which was upheld by the Supreme Court (IV, 2904; United States *v.* Ballin, 144 U.S. 1 (1892)), established the principle that a quorum present made valid any action by the House, although an actual quorum might not vote (I, 216, footnote; IV, 2932). Thenceforth the point of order as to a quorum was required to be that no quorum was present and not that no quorum had voted (IV, 2917). At the time of the establishment of this principle the Speaker revived the count by the Chair as a method of determining the presence of a quorum at a time when no record vote was ordered (IV, 2909). The Speaker has permitted his count of a quorum to be verified by tellers (IV, 2888), but has not conceded it as a right of the House to have tellers under the circumstances (IV, 2916; VI, 647–651; VIII, 2369, 2436), claiming that the Chair might determine the presence of a quorum in such manner as he should deem accurate and suitable (IV, 2932). The Chair counts all Members in sight, whether in the cloak rooms, or within the bar (IV, 2970; VIII, 3120). Later, as the complement to the new view of the quorum, the early theory that the presence of a quorum was as necessary during debate or other business as on a vote was revived (IV, 2935–2949). Also, a line of rulings made under the old theory was overruled; and it was established that the point of no quorum might be made after the House had declined to verify a division by tellers or the yeas and nays (IV, 2918–2926). For a discussion of the *Ballin* decision and the Chair's count to determine a quorum, see House Practice, ch. 43, § 5.

§ 55. Relations of the quorum to acts of the House.

The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business (IV, 2952, 2953; VI, 624, 660, 662), and the point of no quorum may not be withdrawn even by unanimous consent after the absence of a quorum has been ascertained and announced by the Chair (IV, 2928–2931; VI, 657; Apr. 13, 1978, p. 10119; Sept. 25, 1984, p. 26778). But when an action has been completed, it is too late to make the point of order that a quorum was not present when it was done (IV, 2927; VI, 655). But where action requiring a quorum was taken in the ascertained absence of a quorum by ruling of a Speaker pro tempore, the Speaker on the next day ruled that the action was null and void (IV, 2964; see also VIII, 3161). But such absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason (IV, 2962), and where the assumption that a quorum was present when the House acted was uncontradicted by the Journal, it was held that this assumption might not be overthrown by expressions of opinion by Members individually (IV, 2961).

Major revisions in the House rules concerning the necessity and establishment of a quorum occurred in the 94th, 95th, and 96th Congresses. Under the practice in the 93d Congress, for example, a point of no quorum would prevent the report of the chairman of a Committee of the Whole (VI, 666); but in the 93d Congress clause 7 of rule XX (formerly clause 6 of rule XV) was adopted to provide that after the presence of a quorum is once ascertained on any day, a point of no quorum could not be entertained after the Committee had risen and pending the report of the Chairman to the House (see § 1027, *infra*). Clause 7 of rule XX now specifically precludes a point of no quorum unless a question has been put to a vote. However, the Speaker retains the right to recognize a Member to move a call of the House at any time (but may, under clause 7(c) of rule XX recognize for a call of the House after the previous question has been ordered only when the Speaker determines by actual count that a quorum is not present). A point of order of no quorum during debate only in the House does not lie independently under this clause of the Constitution because clause 7 of rule XX (formerly clause 6 of rule XV) is a proper exercise of the House's constitutional rulemaking authority that can be interpreted consistently with the requirement that a quorum be present to conduct business (as opposed to mere debate) (Sept. 8, 1977, p. 28114; Sept. 12, 1977, p. 28800).

Before these changes to rule XX (formerly rule XV), a quorum was required at all times during the reading of the Journal (IV, 2732, 2733; VI, 625, 629) or messages from the President or the Senate (IV, 3522; VI 6600, 6650; VIII 3339); but the modern practice would require the presence of a quorum only when the question is put on a pending motion or proposition in the House such as on a motion incident to the reading, amendment, or approval of the Journal or on the referral or other disposition of other papers read to the House. A point of no quorum no longer lies during debate in the House. The practice in the Committee of the Whole is now governed by clause 6 of rule XVIII. No motion is in order on the failure of a quorum but the motions to adjourn and for a call of the House (IV, 2950; VI, 680) and the motion to adjourn has precedence over the motion for a call of the House (VIII, 2642). A call of the House is in order under the Constitution before the adoption of the rules (IV, 2981). Those present on a call of the House may prescribe a fine as a condition on which an arrested Member may be discharged (IV, 3013, 3014), but this is rarely done. A quorum is not required on motions incidental to a call of the House (IV, 2994; VI, 681; Oct. 8, 1940, p. 13403; and Oct. 8, 1968, p. 30090).

The House may adjourn sine die in the absence of a quorum where both Houses have already adopted a concurrent resolution providing for a sine die adjournment on that day (Oct. 18, 1972, p. 37200).

§ 56. Relations of the quorum to organization of the House.

At the time of organization the two Houses inform one another of the appearance of the quorum in each, and the two Houses jointly inform the President (I, 198–203). A message from one House that its quorum has appeared is not delivered in the other until a quorum has appeared there also (I, 126). But at the beginning of a second session of a Congress the House proceeded to business, although a quorum had not appeared in the Senate (I, 126). At the beginning of a second session of a Congress unsworn Members-elect were taken into account in ascertaining the presence of a quorum (I, 175); however, at the beginning of the second session of the 87th Congress, the Clerk called the House to order, announced the death of Speaker Rayburn during the sine die adjournment, and did not call unsworn Members-elect or Members who had resigned during the hiatus to establish a quorum or elect a new Speaker (Jan. 10, 1962, p. 5). In both Houses the oath has been administered to Members-elect in the absence of a quorum (I, 174, 181, 182; VI, 22), although in one case the Speaker objected to such proceedings (II, 875). Prayer by the Chaplain is not business requiring the presence of a quorum and the Speaker declines to entertain a point of no quorum before prayer is offered (VI, 663; clause 7 of rule XX).

§ 57. Decisions of the Court.

Decisions of the Supreme Court of the United States: Kilbourn *v.* Thompson, 103 U.S. 190 (1881); United States *v.* Ballin, 144 U.S. 1 (1892); Burton *v.* United States, 202 U.S. 344 (1906).

§ 58. The House determines its rules.

2 Each House may determine the Rules of its Proceedings, * * *

§ 59. Power to make rules not impaired by rules or law.

The power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of a preceding House (I, 187, 210; V, 6002, 6743–6747), or by a law passed by a prior Congress (I, 82, 245; IV, 3298, 3579; V, 6765, 6766). The House in adopting its rules may, however, incorporate by reference as a part thereof all applicable provisions of law that constituted the Rules of the House at the end of the preceding Congress (H. Res. 5, 95th Cong., Jan. 4, 1977, pp. 53–70) and has also incorporated provisions of concurrent resolutions that were intended to remain applicable under the Budget Act (H. Res. 5, 107th Cong., Jan. 3, 2001, p. 25). The House twice reaffirmed free-standing directives to the Committee on Standards of Official Conduct contained in a simple House resolution (H. Res. 168, 105th Cong., p. 19317, reaffirmed for the 106th Congress by sec. 2(c), H. Res. 5, Jan. 6, 1999, p. 47, and reaffirmed for the 107th Congress with an exception by sec. 3(a), H. Res. 5, Jan. 3, 2001, p. 24; see § 806, *infra*). In the 108th Congress those free-standing directives were codified in clause 3 of rule XI (sec. 2(h), H. Res. 5, Jan. 7, 2003, p. 7). Ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules (III, 2567), and under later decisions questions of so-called constitutional privilege should also be considered in accordance with the rules (VI, 48; VII, 889; Apr. 8, 1926, p. 7147). But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure (V, 6767, 6768). In exercising its constitutional power to change its rules the House may confine itself within certain limitations (V, 6756; VIII, 3376); but the attempt of the House to deprive the Speaker of his vote as a Member by a rule was successfully resisted (V, 5966, 5967). While the Act of June 1, 1789 (see 2 U.S.C. 25) requires the election of a Clerk before the House proceeds to business yet the House has held that it may adopt rules before electing a Clerk (I, 245). Although the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244; see 2 U.S.C. 26). In case of a vacancy in the Office of Clerk, Sergeant-at-Arms, Doorkeeper (abolished by the 104th Congress; see § 663a, *infra*), Postmaster (abolished during the 102d Congress; see § 668, *infra*), Chaplain, or Chief Administrative Officer, the Speaker is authorized to make temporary appointments (2 U.S.C. 75a–1). The House has adopted a rule before election of a Speaker (I, 94, 95); but in 1839 was deterred by the Act of June 1, 1789 and the Constitution from adopting rules before the administration of the oath to Members-elect (I, 140). The earlier theory that an officer might be empowered to administer oaths by a rule of either House has been abandoned in later practice and the authority has been conferred by law (III, 1823, 1824, 2079, 2303, 2479; 2 U.S.C. 191).

§ 60. Procedure in the House before the adoption of rules.

Before the adoption of rules the House is governed by general parliamentary law, but Speakers have been inclined to give weight to the rules and precedents of the House in modifying the usual constructions of that law (V, 5604, 6758–6760; VIII, 3384; Jan. 3, 1953, p. 24; Jan. 10, 1967, p. 14). The general parliamentary law as understood in the House is founded on Jefferson's Manual as modified by the practice of American legislative assemblies, especially of the House of Representatives (V, 6761–6763; Jan. 3, 1953, p. 24), but the provisions of the House's accustomed rules are not necessarily followed (V, 5509). Before the adoption of rules, the statutory enactments incorporated into the rules of the prior Congress as an exercise of the rulemaking power do not control the proceedings of the new House until it adopts rules incorporating those provisions (Jan. 22, 1971, p. 132).

Before the adoption of rules, it is in order for any Member who is recognized by the Chair to offer a proposition relating to the order of business without asking consent of the House (IV, 3060). Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115). The Speaker may recognize the Majority Leader to offer an initial resolution providing for the adoption of the rules as a question of privilege in its own right (IV, 3060; Deschler, ch. 1, § 8), even before recognizing another Member to offer as a question of privilege another resolution calling into question the constitutionality of that resolution (Speaker Foley, Jan. 5, 1993, p. 49). The Speaker also may recognize a Member to offer for immediate consideration a special order providing for the consideration of a resolution adopting the rules (Speaker Gingrich, H. Res. 5, Jan. 4, 1995, p. 447; H. Res. 5, Jan. 4, 2007, p. ——). The resolution adopting rules for a Congress has included a special order of business for consideration of specified legislation (sec. 108, H. Res. 6, Jan. 4, 1995, p. 463; sec. 3, H. Res. 5, Jan. 6, 1999, p. 76). The Speaker held as not cognizable a point of order that a resolution adopting the Rules of the House contained a provision that the House had no constitutional authority to adopt, stating that the House decides such issues by way of the question of consideration or disposition of the resolution (Speaker Hastert, Jan. 4, 2005, p. ——).

During debate on the resolution adopting rules, any Member may make a point of order that a quorum is not present based upon general parliamentary precedents, since the provisions of clause 7 of rule XX (formerly clause 6(e) of rule XV) prohibiting the Chair from entertaining such a point of order unless the question has been put on the pending proposition are not yet applicable (Jan. 15, 1979, p. 10). Before adoption of rules, under general parliamentary law as modified by usage and practice of the House, an amendment may be subject to the point of order that it is not germane to the proposition to which offered (Jan. 3, 1969, p. 23). Before adoption of rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well and by directing the Sergeant-at-Arms to present the mace as the traditional symbol of order (Jan. 3, 1991, p. 58).

The motion to commit is permitted after the previous question has been ordered on the resolution adopting the rules (V, 5604; Jan. 3, 1989, p. 81; Jan. 3, 1991, p. 61) but is not debatable (Jan. 7, 1997, p. 139). It is the prerogative of the minority to offer a motion to commit even before the adoption of the rules, but at that point the proponent need not qualify as opposed to the resolution (Jan. 3, 1991, p. 61; Jan. 4, 1995, p. 457). Such a motion to commit is not divisible, but if it is agreed to and more than one amendment is reported back pursuant thereto, then separate votes may be had on the reported amendments (Jan. 5, 1993, p. 98). The motion to refer has also been permitted upon the offering of a resolution adopting the rules, and before debate thereon, subject to the motion to lay on the table (Jan. 5, 1993, p. 52).

§ 61. Joint rules.

The two Houses of Congress adopted in the early years of the Government joint rules to govern their procedure in matters requiring concurrent action; but in 1876 these joint rules were abrogated (IV, 3430; V, 6782–6787). The most useful of their provision continued to be observed in practice, however (IV, 3430; V, 6592).

§ 61a. Decisions of the Court.

Decisions of the Supreme Court of the United States: United States *v.* Smith, 286 U.S. 6 (1932); Christoffel *v.* United States, 338 U.S. 84 (1949); United States *v.* Bryan, 339 U.S. 323 (1950); Yellin *v.* United States, 374 U.S. 109 (1963); Powell *v.* McCormack, 395 U.S. 486 (1969).

§ 62. Punishment and expulsion of Members.

* * * [Each House may] punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

§ 63. Punishment and expulsion, generally.

Among the punishments that the House may impose under this provision, the rules of the Committee on Standards of Official Conduct outline the following: (1) expulsion from the House; (2) censure; (3) reprimand; (4) fine; (5) denial or limitation of any right, power, privilege, or immunity of the Member if not in violation of the Constitution; or (6) any other sanction determined by the Committee to be appropriate (rule 24, Committee on Standards of Official Conduct, 110th Cong.). Under rule 10 of the rules of the Committee on Standards of Official Conduct, a statement of alleged violation must be proven by clear and convincing evidence.

In action for censure or expulsion, the House has discussed whether or not the principles of the procedure of the courts should be followed (II, 1255, 1264). The House, in a proceeding for expulsion, declined to give the Member a trial at the bar (II, 1275); but the Senate has permitted a counsel to appear at its bar (II, 1263), although it declined to grant a request for a specific statement of charges or compulsory process for witnesses (II, 1264). In one instance, pending consideration of a resolution to censure a Member, the Speaker informed him that he should retire (II, 1366), but this is not usual. Members or Senators, against whom resolutions have been pending, have participated in debate either by consent to make a personal explanation (II, 1656) or without question as to consent (II, 1246, 1253, 1269, 1286). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). However, after the House had voted censure and the Member has been brought to the bar by the Sergeant-at-Arms to be censured, it was held that he might not then be heard (II, 1259). In the modern practice, the manager of the resolution proposing the punishment (who controls the entire hour) yields a portion of his time to the accused (Oct. 2, 1980, p. 28966; July 24, 2002, p. 14309). In the latter case, the House extended debate on the resolution for a specified period and yielded that entire time to the Member who was the subject of the resolution (July 24, 2002, p. 14310). The manager of the resolution has the right to close debate, not the Member who is the subject of the resolution (July 24, 2002, p. 14313). Where the manager of a resolution has divided his hour three ways, the Chair announced that the order of closing speeches would be as follows: The minority manager of the resolution, the subject of the resolution, and the manager of the resolution (July 24, 2002, p. 14314). Debate on a resolution recommending a disciplinary sanction against a Member may not exceed the scope of the conduct of the accused Member (Dec. 18, 1987, p. 36271).

A resolution recommending reprimand, censure, or expulsion of a Member presents a question of privilege (II, 1254; III, 2648–2651; VI, 236; Dec. 9, 1913, pp. 584–86; July 26, 1990, p. 19717; May 22, 2007, p. ——). If reported by the Committee on Standards of Official Conduct (or a derivation thereof), the resolution may be called up at any time after the committee has filed its report (Jan. 21, 1997, p. 393). Before debate, an expulsion resolution is subject to the motion to lay on the table (Oct. 1, 1976, p. 35111), to postpone to a date certain (Oct. 2, 1980, p. 28953; July 24, 2002, p. 14300), or to refer to committee (Mar. 1, 1979, p. 3753). A proposition to censure is not germane to a proposition to expel (VI, 236).

The Senate once expelled several Senators by a single resolution (II, 1266); however, the House has refused to censure more than one Member by a single resolution (II, 1240, 1621).

§64. Punishment by reprimand.

In the 94th Congress the House by adopting a report from the Committee on Standards of Official Conduct reprimanded a Member for failing to report certain financial holdings in violation of rule XXVI (formerly rule XLIV) and for investing in stock in a Navy bank the establishment of which he was promoting, in violation of the Code of Ethics for Government Service (H. Res. 1421, July 29, 1976, pp. 24379–82). (For the Code of Ethics for Government Service, see H. Con. Res. 175, 85th Cong., 72 Stat. B12.) In the 95th Congress following an investigation by the Committee on Standards of Official Conduct into whether Members or employees had improperly accepted things of value from the Republic of Korea or representatives thereof, the House reprimanded three Members, one for falsely answering an unsworn questionnaire relative to such gifts and violating the Code of Official Conduct, one for failing to report as required by law the receipt of a campaign contribution and violating the Code of Official Conduct, and one for failing to report a campaign contribution, converting a campaign contribution to personal use, testifying falsely to the committee under oath, and violating the Code of Official Conduct (Oct. 13, 1978, pp. 36984, 37009, 37017). In the 100th Congress the House adopted a resolution reprimanding a Member for "ghost voting," improperly diverting government resources, and maintaining a "ghost employee" on his staff (Dec. 18, 1987, p. 36266). In the 101st Congress another was reprimanded for seeking dismissal of parking tickets received by a person with whom he had a personal relationship and not related to official business and for misstatements of fact in a memorandum relating to the criminal probation record of that person (July 26, 1990, p. 19717). In the 105th Congress the House reprimanded the Speaker and ordered him to reimburse a portion of the costs of the investigation by the Committee on Standards of Official Conduct (Jan. 21, 1997, p. 393).

§ 65. Punishment by censure.

Censure is inflicted by the Speaker (II, 1259) and the words are entered in the Journal (II, 1251, 1656; VI 236), but the Speaker may not pronounce censure except by order of the House (VI, 237). When Members have resigned pending proceedings for censure, the House has nevertheless adopted the resolutions of censure (II, 1239, 1273, 1275, 1656). Members have been censured for personalities and other disorder in debate (II, 1251, 1253, 1254, 1259), assaults on the floor (II, 1665), for presenting a resolution alleged to be insulting to the House (II, 1246), and for corrupt acts (II, 1274, 1286). For abuse of the leave to print, the House censured a Member after a motion to expel him had failed (VI, 236). In one instance Members were censured for acts before the election of the then existing House (II, 1286). In the 96th Congress two Members were censured by the House as follows: (1) A Member who during a prior Congress both knowingly increased an office employee's salary for repayment of that Member's personal expenses and who was unjustly enriched by clerk-hire employees' payments of personal expenses later compensated by salary increases, was censured and ordered to repay the amount of the unjust enrichment with interest (July 31, 1979, p. 21592); (2) a Member was censured for receiving over a period of time sums of money from a person with a direct interest in legislation in violation of clause 3 of rule XXIII (formerly clause 4 of rule XLIII), and for transferring campaign funds into office and personal accounts (June 10, 1980, pp. 13801–20)). In the 98th Congress the House adopted two resolutions (as amended in the House), each censuring a Member for an improper relationship with a House page in a prior Congress (July 20, 1983, p. 20020 and p. 20030).

§ 66. Punishment by expulsion.

Five Members have been expelled in the history of the House. Among those, three were expelled for various offenses related to their service for the Confederacy in the Civil War: John B. Clark of Missouri (a Member-elect) (II, 1262, July 13, 1861); Henry C. Burnett of Kentucky (II, 1261, Dec. 3, 1861); and John W. Reid of Missouri (II, 1261, Dec. 6, 1861). Michael J. Myers of Pennsylvania was expelled after being convicted in a Federal court of bribery and conspiracy in accepting funds to perform official duties (Oct. 2, 1980, p. 28978). James A. Traficant of Ohio was expelled after being convicted in a Federal court for crimes including (1) trading official acts and influence for things of value; (2) demanding and accepting salary kickbacks from his congressional employees; (3) influencing a congressional employee to destroy evidence and to provide false testimony to a Federal grand jury; (4) receiving personal labor and the services of his congressional employees while they were being paid by the taxpayers to perform public service; and (5) filing false income tax returns (July 24, 2002, p. 14319). Three Senators were expelled for their association with the Confederates during the Civil War (II, 1268–1270).

The power of expulsion has been the subject of much discussion (I, 469, 476, 481; II, 1264, 1265, 1269; VI, 56, 398; see Powell *v.* McCormack, 395 U.S. 486 (1969)). In one case a Member-elect who had not taken the oath was expelled (II, 1262), and in another case the power to do this was discussed (I, 476). In one instance the Senate assumed to annul its action of expulsion (II, 1243). The Supreme Court has decided that a judgment of conviction under a disqualifying statute does not compel the Senate to expel (II, 1282; Burton *v.* United States, 202 U.S. 344 (1906)). The power of expulsion in its relation to offenses committed before the Members' election has been discussed (II, 1264, 1284, 1285, 1286, 1288, 1289; VI, 56, 238). In one case the Judiciary Committee of the House concluded that a Member might not be punished for an offense alleged to have been committed against a preceding Congress (II, 1283); but the House itself declined to express doubt as to its power to expel and proceeded to inflict censure (II, 1286). In addition, the 96th Congress punished Members on two occasions for offenses committed during a prior Congress (H. Res. 378, July 31, 1979, p. 21592; H. Res. 660, June 10, 1980, pp. 13801–20). It has been held that the power of the House to expel one of its Members is unlimited; a matter purely of discretion to be exercised by a two-thirds vote, from which there is no appeal (VI, 78). The resignation of the accused Member has always caused a suspension of proceedings for expulsion (II, 1275, 1276, 1279; VI, 238). Following the expulsion of a Member, the Clerk notifies the Governor of the relevant state of the action of the House (July 24, 2002, p. 14319).

§ 67. Decisions of the Court.

Decisions of the Supreme Court of the United States: Anderson *v.* Dunn, 6 Wh. 204 (1821); Kilbourn *v.* Thompson, 103 U.S. 168 (1881); United States *v.* Ballin, 144 U.S. 1 (1892); In re Chapman, 166 U.S. 661 (1897); Burton *v.* United States, 202 U.S. 344 (1906); Powell *v.* McCormack, 395 U.S. 486 (1969).

§ 68. Each House to keep a journal.

3 Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; * * *

§ 69. The Journal the official record.

The Journal and not the Congressional Record is the official record of the proceedings of the House (IV, 2727). Its nature and functions have been the subject of extended discussions (IV, 2730, footnote). The House has fixed its title (IV, 2728). While it ought to be a correct transcript of the proceedings of the House, the House has not insisted on a strict chronological order of entries

(IV, 2815). The Journal is dated as of the legislative and not the calendar day (IV, 2746).

§ 70. Journal a record of proceedings and not of reasons.

The Journal records proceedings but not the reasons therefor (IV, 2811) or the circumstances attending (IV, 2812), or the statements or opinions of Members (IV, 2817–2820). Exceptions to this rule are rare (IV, 2808, 2825). Protests have on rare occasions been admitted by the action of the House (IV, 2806, 2807), but the entry of a protest on the Journal may not be demanded by a Member as a matter of right (IV, 2798) and such demand does not present a question of privilege (IV, 2799). A motion not entertained is not entered on the Journal (IV, 2813, 2844–46).

§ 71. House's absolute control of entries in the Journal.

The House controls the Journal and may decide what are proceedings, even to the extent of omitting things actually done or recording things not done (IV, 2784; VI, 634). While the Speaker has entertained motions to amend the Journal so as to cause it to state what was not the fact, leaving it for the House to decide on the propriety of such act (IV, 2785), and holding that he could not prevent a majority of the House from so amending the Journal as to undo an actual transaction (IV, 3091–93), in none of those rulings was an amendment permitted to correct the Journal that had the effect of collaterally changing the tabling of a motion to reconsider. In fact, under the precedents cited in § 902, *infra,* under clause 1 of rule XVI it has been held not in order to amend or strike out a Journal entry setting forth a motion exactly as made (IV, 2783, 2789), and thus it was held not in order to amend the Journal by striking out a resolution actually offered (IV, 2789), but on one occasion the House vacated the Speaker's referral of an executive communication by amending the Journal of the preceding day (Mar. 19, 1990, p. 4488). Only on rare instances has the House nullified proceedings by rescinding the records of them in the Journal (IV, 2787), the House and Senate usually insisting on the accuracy of its Journal (IV, 2783, 2786). In rare instances the House and Senate have rescinded or expunged entries in Journals of preceding Congresses (IV, 2730, footnote, 2792, 2793).

§ 72. Record of votes in the Journal.

The Journal should record the result of every vote and state in general terms the subject of it (IV, 2804); but the result of a vote is recorded in figures only when the yeas and nays are taken (IV, 2827), when the vote is recorded by electronic device or by clerks, or when a vote is taken by ballot, it having been determined in latest practice that the Journal should show not only the result but the state of the ballot or ballots (IV, 2832).

§ 73. Approval of the Journal.

It is the uniform practice of the House to approve its Journal for each legislative day (IV, 2731). Where Journals of more than one session remain unapproved, they are taken up for approval in chronological order (IV, 2771–2773). In ordinary practice the Journal is approved by the House without the formal putting of the motion to vote (IV, 2774).

The former rule required the reading of the Journal on each legislative day. The reading could be dispensed with only by unanimous consent (VI, 625) or suspension of the rules (IV, 2747–2750) and had to be in full when demanded by any Member (IV, 2739–2741; VI, 627–628; Feb. 22, 1950, p. 2152).

The present form of the rule (clause 1 of rule I; see § 621, *infra*) was drafted from section 127 of the Legislative Reorganization Act of 1970 (84 Stat. 1140), incorporated into the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), and was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Under the current practice, the Speaker is authorized to announce his approval of the Journal, which is deemed agreed to by the House, subject to the right of any Member to demand a vote on agreeing to the Speaker's approval (which, if decided in the affirmative, is not subject to the motion to reconsider). In the 98th Congress, the Speaker was given the authority to postpone a record vote on agreeing to his approval of the Journal to a later time on that legislative day (H. Res. 5, Jan. 3, 1983, p. 34). While the transaction of any business is not in order before approval of the Journal (IV, 2751; VI, 629, 637; Oct. 8, 1968, p. 30096), approval of the Journal yields to the simple motion to adjourn (IV, 2757), administration of the oath (I, 171, 172), an arraignment of impeachment (VI, 469), and questions of the privileges of the House (II, 1630), and the Speaker may in his discretion recognize for a parliamentary inquiry before approval of the Journal (VI, 624). Under clause 1 of rule I, as amended in the 96th Congress, a point of order of no quorum is not in order before the Speaker announces his approval of the Journal. Clause 7 of rule XX generally prohibits the making of points of order of no quorum unless the Speaker has put the question on the pending motion or proposition.

§ 74. Motions to amend the Journal.

Under the practice before clause 1 of rule I was adopted in its present form, the motion to amend the Journal took precedence over the motion to approve it (IV, 2760; VI, 633); but the motion to amend may not be admitted after the previous question is demanded on a motion to approve (IV, 2770; VI, 633; VIII, 2684). An expression of opinion as to a decision of the Chair was held not in order as an amendment to the Journal (IV, 2848). A proposed amendment to the Journal being tabled does not carry the Journal with it (V, 5435, 5436). While a proposed correction of the Journal may be recorded in the Journal, yet it is not in order to insert in full in this indirect way what has been denied insertion in the first instance (IV, 2782, 2804, 2805). The earlier practice was otherwise, however (IV, 2801–2803). The Journal of the last day of a session is not approved on the assembling of the next session, and is not ordinarily amended (IV, 2743, 2744). For further discussion of the composition and approval of the Journal, see Deschler, ch. 5.

§ 74a. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892).

§ 75. Yeas and Nays entered on the Journal.

* * * and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

§ 76. Conditions of ordering yeas and nays.

The yeas and nays may be ordered before the organization of the House (I, 91; V, 6012, 6013), but are not taken in Committee of the Whole (IV, 4722, 4723). They are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution (V, 7038, 7039; VIII, 3506), but are required to pass a bill over a veto (§ 104; VII, 1110). In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way (V, 6016–6028). Neither is a quorum necessary on a motion to reconsider the vote whereby the yeas and nays are ordered (V, 5693). When a quorum fails on a yea and nay vote it is the duty of the Speaker and the House to take notice of that fact (IV, 2953, 2963, 2988). If the House adjourns, the order for the yeas and nays remains effective whenever the bill again comes before the House (V, 6014, 6015; VI, 740; VIII, 3108), and it has been held that the question of consideration might not intervene on a succeeding day before the second calling of the yeas and nays (V, 4949). However, when the call of the House is automatic, the Speaker directs the roll to be called or the vote to be taken by electronic device without motion from the floor (VI, 678, 679, 694, 695); and should a quorum fail to vote and the House adjourn, proceedings under the automatic call are vacated and the question recurs de novo when the bill again comes before the House (Oct. 10, 1940, pp. 13534–35; Oct. 13, 1962, p. 23474; Oct. 19, 1966, p. 27641). While the Constitution and the Rules of the House guarantee that votes taken by the yeas and nays be spread upon the Journal, neither requires that a Member's vote be announced to the public immediately during the vote (Sept. 19, 1985, p. 24245).

The yeas and nays may not be demanded until the Speaker has put the question in the form prescribed by clause 6 of rule I (formerly clause 5) (Oct. 2, 1974, p. 33623).

§ 77. Demanding the yeas and nays.

The yeas and nays may be demanded while the Speaker is announcing the result of a division (V, 6039), while a vote by tellers is being taken (V, 6038), and even after the announcement of the vote if the House has not passed to other business (V, 6040, 6041; VIII, 3110) and if the Member seeking the yeas and nays is on his feet and seeking recognition for that purpose when the Chair announces the result of the voice vote (Nov. 22, 1991, p. 34075; Sep. 21, 2005, p. ——). But after the Speaker has announced the result of a division on a motion and is in the act of putting the question on another motion it is too late to demand the yeas and nays on the first motion (V, 6042). And it is not in order during the various processes of a division to repeat a demand for the yeas and nays that has once been refused by the House (V, 6029, 6030, 6031). The constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory (V, 5737; VIII, 3107); but this constitutional right does not exist as to a vote to second a motion when such second is required by the rules (V, 6032–6036; VIII, 3109). The right to demand yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House (V, 6044).

§ 78. Yeas and nays ordered by one-fifth.

In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand (V, 6043; VIII, 3112, 3115). In ascertaining whether one-fifth of those present support a demand for the yeas and nays the Speaker counts the entire number present and not merely those who rise to be counted (VIII, 3111, 3120). Such count is not subject to verification by appeal (Sept. 12, 1978, p. 28984; Mar. 8, 2006, p. ——), and a request for a rising vote of those opposed to the demand is not in order (VIII, 3112–3114). Where the Chair prolongs his count of the House in determining whether one-fifth have supported the demand for yeas and nays, he counts latecomers in support of the demand as well as for the number present (Sept. 24, 1990, p. 25521). After the House, on a vote by tellers, has refused to order the yeas and nays it is too late to demand the count of the negative on an original vote (V, 6045).

§ 79. Reconsideration of the vote ordering the yeas and nays.

A motion to reconsider the vote ordering the yeas and nays is in order (V, 6029; VIII, 2790), and the vote may be reconsidered by a majority. If the House votes to reconsider the yeas and nays may again be ordered by one-fifth (V, 5689–5691). But when the House, having reconsidered, again orders the yeas and nays, a second motion to reconsider may not be made (V, 6037). In one instance it was held that the yeas and nays might be demanded on a motion to reconsider the vote whereby the yeas and nays were ordered (V, 5689), but evidently there must be a limit to this process. The vote whereby the yeas and nays are refused may be reconsidered (V, 5692).

§ 80. Effect of an order of the yeas and nays.

A motion to adjourn may be admitted after the yeas and nays are ordered and before the roll call has begun (V, 5366); and a motion to suspend the rules has been entertained after the yeas and nays have been demanded on another matter (V, 6835). Consideration of a conference report (V, 6457), and a motion to reconsider the vote by which the yeas and nays were ordered (V, 6029; VIII, 2790) may be admitted. A demand for tellers or for a division is not precluded or set aside by the fact that the yeas and nays are demanded and refused (V, 5998; VIII, 3103).

§ 81. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892); Twin City Bank *v.* Nebeker, 167 U.S. 196 (1897); Wilkes County *v.* Coler, 180 U.S. 506 (1901); Marshall *v.* Gordon, 243 U.S. 521 (1917).

§ 82. Adjournment for more than three days or to another place.

4 Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

§ 82a. Adjournment to another place.

The word "Place" in the above paragraph was construed to mean the seat of Government, and consent of the Senate is not required where the House orders its meetings to be held in another structure at the seat of Government (Speaker Rayburn, Aug. 17, 1949, pp. 11651, 11683). Under clause 12(d) of rule I, the Speaker may convene the House in a place *within* the District of Columbia, other than the Hall of the House, whenever, in his opinion, the public interest shall warrant it (§ 639, *infra*). In recent practice the two Houses have granted joint leadership (or their designees) authority for an entire Congress to assemble the Congress at a place *outside* the District of Columbia whenever the public interest shall warrant it (H. Con. Res. 1, Feb. 13, 2003, p. 4080; H. Con. Res. 1, Jan. 4, 2005, p. —— (not adopted by the Senate); H. Con. Res. 1, Jan. 4, 2007, p. ——). The Speaker executes by letter his designation under such resolution (*e.g.*, Mar. 13, 2003, p. 6123; Jan. 20, 2005, p. ——). After September 11, 2001, recall authority carried in adjournment resolutions has allowed reassembly at such place as may be designated (see § 84, *infra*). The President may convene Congress at places outside the seat of Government during hazardous circumstances (2 U.S.C. 27; Deschler, ch. 1, § 4).

On November 22, 1940, p. 13715, the House adopted a resolution providing that thereafter until otherwise ordered its meetings be held in the Caucus room of the new House Office Building. Likewise the Senate on the same day, p. 13709, provided that its meetings be held in the Chamber formerly occupied by the Supreme Court in the Capitol. The two Houses continued to hold their sessions in these rooms until the opening of the 77th Congress. These actions were necessitated by the precarious condition of the roofs in the two Chambers. On June 28, 1949, p. 8571, and on September 1, 1950, p. 14140, the House provided that until otherwise ordered its meetings be held in the Caucus room of the new House Office Building, pending the remodeling of its Chamber. On June 29, 1949, p. 8584, and on Aug. 9, 1950, p. 12106, the Senate provided that its meetings be held in the Chamber formerly occupied by the Supreme Court in the Capitol, pending remodeling of its Chamber. The House returned to its Chamber on January 3, 1950, and again on January 1, 1951. The Senate returned to its Chamber on January 3, 1950, and again on January 3, 1951.

There has been no occasion for the convening of a session of Congress outside the seat of Government. However, the Congress has engaged in ceremonial functions outside the seat of Government, which were authorized by concurrent resolution (H. Con. Res. 131, May 28, 1987, p. 14031; H. Con. Res. 96, Apr. 18, 1989, p. 6834; H. Con. Res. 448, July 25, 2002, p. 14645).

§ 83. Adjournment of the House within the three-day limit.

The House of Representatives in adjourning for not more than three days must take into the count either the day of adjourning or the day of the meeting, and Sunday is not taken into account in making this computation (V, 6673, 6674). The House may provide for a session of the House on a Sunday, traditionally a "dies non" under the precedents of the House (Dec. 17, 1982, p. 31946; Dec. 18, 1987, p. 36352; Nov. 17, 1989, p. 30029; Aug. 20, 1994, p. 23367). The House has by standing order provided that it should meet on two days only of each week instead of daily (V, 6675). Before the election of Speaker, the House has adjourned for more than one day (I, 89, 221). The House has by unanimous consent agreed to an adjournment for less than three days but specified that it would continue in adjournment for 10 days pursuant to a concurrent resolution already passed by the House if the Senate adopted the concurrent resolution before the third day of the House's adjournment (Nov. 20, 1987, p. 33054). The Committee on Rules has reported a rule authorizing the Speaker to declare the House in recesses subject to calls of the Chair during five discrete periods, each consistent with the constitutional constraint that neither House adjourn (or recess) for more than three days without consent of the other House (Dec. 21, 1995, p. 38141; Jan. 5, 1996, p. 357). Under clause 12(c) of rule I, during any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening, then he may, in consultation with the Minority Leader, postpone the time for reconvening within the three-day limit prescribed by the Constitution. In the alternative, the Speaker, under the same conditions, may reconvene the House before the time previously appointed solely to declare the House in recess within that three-day limit (see § 639, *infra*).

§ 84. Resolutions for adjournment of the two Houses.

Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote). When it adjourns in this way, but not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677). At the close of the first session of the 66th Congress, the two Houses adjourned sine die under authority granted each House by simple resolutions consenting to such adjournment sine die at any time before a specified date (Nov. 19, 1919, p. 8810).

Until the 67th Congress neither House had ever adjourned for more than three days by itself with the consent of the other, but resolutions had been offered for the accomplishment of that end (V, 6702, 6703). In the modern practice it is common for a concurrent resolution to provide for a one-House adjournment or to provide for each House to adjourn for different time periods. For example: (1) the House adjourned until August 15, 1922, with the consent of the Senate (June 29, 1922, p. 10439); (2) the two Houses provided for an adjournment sine die of the House on August 20, 1954, and of the Senate at any time before December 25, 1954 (H. Con. Res. 266); (3) the two Houses provided for an adjournment sine die of the House on December 20 or December 21 pursuant to a motion made by the Majority Leader or his designee, and of the Senate at any time before January 3, 1983, as determined by the Senate, and for adjournments or recesses of the Senate for periods of more than three days as determined by the Senate during such period (H. Con. Res. 438, Dec. 20, 1982, p. 32951); (4) the two Houses provided for an adjournment of the Senate to a day certain and of the House for more than three days to a day certain, or to any day before that day as determined by the House (S. Con. Res. 102, May 27, 1982, pp. 12504, 12505); (5) the two Houses provided for an adjournment to a day certain, with a provision that if there should be no quorum present on that day the session should terminate (V, 6686).

A concurrent resolution adjourning both Houses for more than three days, or sine die, normally includes joint leadership authority to reassemble the Members whenever the public interest shall warrant it (see, *e.g.*, July 8, 1943, p. 7516; June 23, 1944, p. 6667; Sept. 21, 1944, p. 8109; July 18, 1945, p. 7733; July 26, 1947, p. 10521; June 20, 1948, p. 9348; Aug. 7, 1948, p. 10247; Dec. 22, 1973, p. 43327; Dec. 20, 1974, p. 41815; Nov. 21, 1989, 101st Cong., p. 31156; Oct. 3, 1996, 104th Cong., p. 12275; Nov. 13, 1997, 105th Cong., p. 26538; Dec. 15, 2000, 106th Cong., p. 27019). Pursuant to such recall authority: (1) the Speaker and the Majority Leader of the Senate notified Members of the House to reassemble, the Senate already being in session (Mar. 20, 2005, p. ——, pursuant to H. Con. Res. 103, 109th Cong., Mar. 17, 2005, p. ——); (2) the Speaker and the Majority Leader of the Senate notified Members of both Houses to reassemble (Sept. 2, 2005, p. ——, pursuant to H. Con. Res. 225, 109th Cong., July 28, 2005, p. ——).

After September 11, 2001, such recall authority has allowed reassembly at such place as may be designated (see, *e.g.*, S. Con. Res. 160, Nov. 22, 2002, p. 23512; H. Con. Res. 531, Dec. 9, 2004, p. ——). More recently, such recall authority permitted recall by designees of the Speaker and the Majority Leader of the Senate (see, *e.g.,* S. Con. Res. 132, July 26, 2002, p. 15138). The Speaker executes by letter his designation under a concurrent resolution of adjournment, as well as his designation under

House Concurrent Resolution 1 (*e.g.,* Mar. 13, 2003, p. 6123; Jan. 20, 2005, p. ——). The Speaker also executes by letter his designation of another Member to utilize reassembly authority under a joint resolution changing the convening date of the next session (H. J. Res. 80, 108th Cong., Dec. 15, 2003, p. ——).

On occasion an adjournment resolution has provided for one-House recall (see, *e.g.*, July 20, 1970, 91st Cong., p. 24978). Joint leadership and House only recall provisions were included in the sine die adjournment resolution for the second session of the 105th Congress (H. Con. Res. 353, Oct. 20, 1998, p. 27348), and the Speaker exercised his recall authority under that resolution to reassemble the House (Dec. 17, 1998, p. 27802).

When the Senate is out of session for not more than three days, the Senate Majority and Minority Leaders may modify an order for the time or place of convening when, in their opinion, such action is warranted by intervening circumstances (S. Res. 296, 108th Cong., Feb. 3, 2004, p. ——). Pursuant to such authority, during an adjournment of the Senate for not more than three days, the Senate convened earlier than previously ordered to adopt a House concurrent resolution providing for an adjournment of the two Houses (H. Con. Res. 103, Mar. 17, 2005, p. ——), section 2 of which enabled a recall of the House (Mar. 20, 2005, p. ——).

A resolution adopted in the first session of the 106th Congress provided for an adjournment to a date certain, unless the House sooner received a specified message from the Senate, in which case it would stand adjourned sine die (H. Con. Res. 235, Nov. 18, 1999, p. 30734). It has become the common practice for the House, by unanimous consent adopted after originating an adjournment resolution, to fix a time to which it would adjourn within three days unless the House were sooner to receive a message from the Senate transmitting its adoption of the adjournment resolution, in which case the House would stand adjourned pursuant to that resolution (see, *e.g.*, Nov. 3, 2000, p. 25993; Mar. 20, 2002, p. 3726).

A concurrent resolution providing for the sine die adjournment of the first session may contain a proviso that when the second session convenes the Senate or House may not conduct organizational or legislative business but shall adjourn on that day until a date certain, unless sooner recalled (H. Con. Res. 232, 96th Cong., Dec. 20, 1979, p. 37317; H. Con. Res. 260, 102d Cong., Nov. 26, 1991, p. 35840; H. Con. Res. 235, 106th Cong., Nov. 18, 1999, p. 30734). The prohibition on the conduct of such business may be applied to the House by simple resolution and may vest the Speaker with the authority to dispense with such business over a period of time (H. Res. 619, as amended by H. Res. 640, 109th Cong., Dec. 16, 2005, p. ——, Dec. 18, 2005, p. ——). Such a prohibition does not preclude recognition for one-minute speeches and special-order speeches by unanimous consent (Jan. 3, 1992, pp. 2, 9) or the introduction and numbering of bills and resolutions (which would not be noted in the Congressional Record or referred by the Speaker until the next legislative day, when executive communications, petitions, and memorials also would be numbered and referred) (Jan. 24, 2000, p. 48). The House has passed a joint resolution appointing a day for the convening of a second session of a Congress and provided for possible earlier assembly by joint-leadership recall (see, *e.g.*, H. J. Res. 80, 107th Cong., Dec. 20, 2001, p. 27597; H. J. Res. 80, 108th Cong., Nov. 21, 2003, p. ——).

A concurrent resolution to provide for adjournment for more than three days or an adjournment sine die is offered in the House as a matter of privilege (V, 6701–6706), and is not debatable (VIII, 3372–3374), though a Member may be recognized under a reservation of objection to a unanimous-consent request that the resolution be agreed to (Oct. 27, 1990, p. 36850). The Legislative Reorganization Act of 1970 provides for a sine die adjournment, or (in an odd numbered year) an adjournment of slightly over a month (from that Friday in August which is at least 30 days before Labor Day to the Wednesday following Labor Day) unless the nation is in a state of war, declared by Congress (sec. 461(b); 84 Stat. 1140). Congress may, of course, waive this requirement and make other determinations regarding its adjournment (see § 1106, *infra*).

The requirement that resolutions providing for an adjournment sine die of either House may not be considered until Congress has completed action on the second concurrent resolution on the budget for the fiscal year in question, and on any reconciliation legislation required by such a resolution, contained in section 310(f) of the Congressional Budget Act of 1974 (P.L. 93–344), was repealed by the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177). That law amended sections 309 and 310 of the Congressional Budget Act to prohibit the consideration of concurrent resolutions providing adjournments for more than three calendar days during the month of July in excess of three days until the House has approved annual appropriation bills within the jurisdictions of all the subcommittees on Appropriations for the ensuing fiscal year, and until the House has completed action on all reconciliation legislation for the ensuing fiscal year required to be reported by the concurrent resolution on the budget for that year (see § 1127, *infra*).

§ 85. Compensation of Members.

SECTION 6. [1] The 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.

The 27th amendment to the Constitution addresses laws varying the compensation for the services of the Senators and Representatives (see § 258, *infra*). The present rate of compensation of Representatives, the Resident Commissioner from Puerto Rico, Delegates, the Speaker, the Majority and Minority Leaders of the House, and the Vice President is established by law (2 U.S.C. 31; 3 U.S.C. 104) with an additional amount per annum to assist in defraying expenses (2 U.S.C. 31b; 3 U.S.C. 111). These rates of compensation are all (except for the expense allowances) subject to annual cost of living adjustments (2 U.S.C. 31(2)). The present rate of compensation of Senators is that fixed by section 1101 of Public Law 101–194, as adjusted pursuant to 2 U.S.C. 31(2).

§ 86. Salary and deductions.

Under the Federal Salary Act of 1967 (2 U.S.C. 351–362), the Citizens' Commission on Public Service and Compensation (formerly the Commission on Executive, Legislative and Judicial Salaries) is authorized and directed to conduct quadrennial reviews of the rates of pay of specified government officials, including Members of Congress, and to report to the President the results of each review and its recommendations for adjustments in such rates. The enactment of those recommendations is governed by the Federal Salary Act (see § 1130(12), *infra*).

The statute also provides for deductions from the pay of Members and Delegates who are absent from the sessions of the House for reasons other than illness of themselves and families, or who retire before the end of the Congress (2 U.S.C. 39; IV, 3011, footnote). The law as to deductions has been held to apply only to Members who have taken the oath (II, 1154). Members and Delegates are paid monthly on certificate of the Speaker (2 U.S.C. 34, 35, 37, 57a). The law also provides that the residence of a Member of Congress for purpose of imposing State income tax laws shall be the State from which elected and not the State, or subdivision thereof, in which the Member maintains an abode for the purpose of attending sessions of Congress (4 U.S.C. 113).

§ 87. Questions as to compensation.

Questions have arisen frequently as to compensation of Members especially in cases of Members elected to fill vacancies (I, 500; II, 1155) and where there have been questions as to incompatible offices (I, 500) or claims to a seat (II, 1206). The Supreme Court has held that a Member chosen to fill a vacancy is entitled to salary only from the time that the compensation of his predecessor has ceased. Page *v.* United States, 127 U.S. 67 (1888); see also 2 U.S.C. 37.

§ 88. Travel and Members' representational allowances.

In the 92d Congress, the provisions of H. Res. 457 of that Congress, authorizing the Committee on House Administration to adjust allowances of Members and committees without further action by the House, were enacted into permanent law (2 U.S.C. 57), but the 94th Congress enacted into permanent law H. Res. 1372 of that Congress, stripping the Committee of that authority and requiring House approval of the committee's recommendations, except in cases made necessary by price changes in materials and supplies, technological advances in office equipment, and cost of living increases (2 U.S.C. 57a). The Committee on House Administration retains authority under 2 U.S.C. 57 to independently adjust amounts under certain conditions outlined in 2 U.S.C. 57a (Mar. 21, 1977, p. 8227; Apr. 21, 1983, p. 9339). The text of those statutes follow:

"SEC. 57. ADJUSTMENT OF HOUSE OF REPRESENTATIVES ALLOWANCES BY COMMITTEE ON HOUSE ADMINISTRATION

"(a) IN GENERAL.—Subject to the provision of law specified in subsection (b) of this section, the Committee on House Administration of the House of Representatives may, by order of the Committee, fix and adjust the amounts, terms, and conditions of, and other matters relating to, allowances of the House of Representatives within the following categories:

"(1) For Members of the House of Representatives, the Members' Representational Allowance, including all aspects of the Official Mail Allowance within the jurisdiction of the Committee under section 59(e) of this title.

"(2) For committees, the Speaker, the Majority and Minority Leaders, the Clerk, the Sergeant at Arms, and the Chief Administrative Officer, allowances for official mail (including all aspects of the Official Mail Allowance within the jurisdiction of the Committee under section 59e of this title), stationery, and telephone and telegraph and other communications.

"(b) PROVISION SPECIFIED.—The provision of law referred to in subsection (a) of this section is section 57a of this title.

"(c) MEMBER OF THE HOUSE OF REPRESENTATIVES DEFINED.—As used in this section, the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, the Congress."

"SEC. 57a. LIMITATION ON ALLOWANCE AUTHORITY OF COMMITTEE ON HOUSE ADMINISTRATION.

"(a) IN GENERAL.—An order under the provision of law specified in subsection (c) of this section may fix or adjust the allowances of the House of Representatives only by reason of—

"(1) a change in the price of materials, services, or office space;

"(2) a technological change or other improvement in office equipment; or

"(3) an increase under section 5303 of title 5 in rates of pay under the General Schedule.

"(b) RESOLUTION REQUIREMENT.—In the case of reasons other than the reasons specified in paragraph (1), (2), or (3) of subsection (a) of this section, the fixing and adjustment of the allowances of the House of Representatives in the categories described in the provision of law specified in subsection (c) of this section may be carried out only by resolution of the House of Representatives.

"(c) PROVISION SPECIFIED.—The provision of law referred to in subsections (a) and (b) of this section is section 57 of this title."

In the 104th Congress the Committee on House Administration promulgated an order abolishing separate allowances for Clerk Hire, Official Expenses, and Official Mail, in favor of a single "Members' Representational

Allowance" (MRA), which was ultimately enacted into law (2 U.S.C. 57b). The MRA is provided for the employment of staff in the Member's Washington and district offices, official expenses incurred by the Member, and the postage expenses of first, third, and fourth class frankable mail.

Until January 1, 1988, the maximum salary for staff members was the rate of basic pay authorized for Level V of the Executive Schedule (by order of the Committee on House Administration, Mar. 21, 1977, p. 8227). Under section 311 of the Legislative Branch Appropriations Act, 1988, as contained in section 101(i) of Public Law 100–202 (2 U.S.C. 60a–2a), the maximum salary for staff members is set by pay order of the Speaker. A Member may not employ a relative on his MRA (5 U.S.C. 3110). The Code of Official Conduct also precludes certain hiring practices of Members (see § 1095, *infra*).

Until the 103d Congress, a Member could employ a "Lyndon Baines Johnson Congressional Intern" for a maximum of two months at not to exceed $1,160 per month. Such internships were available for college students and secondary or postsecondary school teachers (H. Res. 420, 93d Cong., Sept. 18, 1973, p. 30186). Any paid internship is now funded through the MRA.

The statutes provide for continuation of the pay of clerical assistants to a Member upon his or her death or resignation, until a successor is elected to fill the vacancy, and such clerical assistants perform their duties under the direction of the Clerk of the House (2 U.S.C. 92a–92d). Upon the explusion of a Member in the 96th Congress, the House by resolution extended those provisions to any termination of service by a Member during the term of office (H. Res. 804, Oct. 2, 1980, p. 28978).

For current information on the MRA and the method of its accounting and disbursement, see current U.S. House of Representatives Congressional Handbook, Committee on House Administration.

§ 88a. Ban on Legislative Service Organizations.

At its organization the 104th Congress prohibited the establishment or continuation of any legislative service organization (as that term had been understood in the 103d Congress) and directed the Committee on House Administration to take such steps as were necessary to ensure an orderly termination and accounting for funds of any legislative service organization in existence on January 3, 1995 (sec. 222, H. Res. 6, Jan. 4, 1995, p. 477).

§ 89. Leadership staff allowances.

Separate from the MRA specified above, the leaders of the House (the Speaker, Majority Leader, Minority Leader, Majority Whip, and Minority Whip) are entitled to office staffing allowances consisting of certain statutory positions as well as lump-sum appropriations authorized by section 473 of the Legislative Reorganization Act of 1970 (84 Stat. 1140). The portion of these allowances for leadership office personnel may be adjusted by the Clerk of the House in certain situations when the President effects a pay adjustment for certain classes of Federal employees under the Federal Pay Comparability Act of 1970 (P.L. 91–656; 84 Stat. 1946).

§ 89a. Speaker's "pay orders."

Under section 311(d) of the Legislative Branch Appropriations Act, 1988 [2 U.S.C. 60a–2a], the Speaker may issue "pay orders" that adjust pay levels for officers and employees of the House to maintain certain relationships with comparable levels in the Senate and in the other branches of government. For the text of section 311(d), see § 1130, *infra*.

§ 90. Privilege of Members from arrest.

* * * They [the Senators and Representatives] shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their respective Houses, and in going to and returning from the same; * * *

§ 91. Assertions of privilege of Members by the House.

The word "felony" in this provision has been interpreted not to refer to a delinquency in a matter of debt (III, 2676), and "treason, felony, and breach of the peace" have been construed to mean all indictable crimes (III, 2673). The Supreme Court has held that the privilege does not apply to arrest in any criminal case. Williamson *v.* United States, 207 U.S. 425 (1908). The courts have discussed and sustained the privilege of the Member in going to and returning from the session (III, 2674); and where a person assaulted a Member on his way to the House, although at a place distant therefrom, the House arrested him on warrant of the Speaker, arraigned him at the bar and committed him (II, 1626, 1628). Other assaults under these circumstances have been treated as breaches of privilege (II, 1645). Where a Member had been arrested and detained under mesne process in a civil suit during a recess of Congress, the House decided that he was entitled to discharge on the assembling of Congress, and liberated him and restored him to his seat by the hands of its own officer (III, 2676). Service of process is distinguished from arrest in civil cases and related historical data are collected in Long *v.* Ansell, 293 U.S. 76 (1934), where the Supreme Court held that the clause was applicable only to arrests in civil suits, now largely obsolete but common at the time of the adoption of the United States Constitution. Rule VIII (formerly rule L) was added in the 97th Congress to provide a standing procedure governing subpoenas to Members, officers, and employees directing their appearance as witnesses relating to the official functions of the House, or for the production of House documents.

§92. Members privileged from being questioned for speech or debate.

* * * and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place.

§93. Scope of the privilege.

This privilege as to "any speech or debate" applies generally to "things done in a session of the House by one of its Members in relation to the business before it." Kilbourn *v.* Thompson, 103 U.S. 168 (1881), cited at III, 2675. See also II, 1655 and §§301–302, *infra*, for provisions in Jefferson's Manual on the privilege; and Deschler, ch. 7. The clause precludes judicial inquiry into the motivation, preparation, or content of a Member's speech on the floor and prevents such a speech from being made the basis for a criminal conspiracy charge against the Member. United States *v.* Johnson, 383 U.S. 169 (1966). The Supreme Court held in United States *v.* Helstoski, 442 U.S. 447 (1979), that under the Speech or Debate Clause, neither evidence of nor references to legislative acts of a Member of Congress may be introduced by the Government in a prosecution under the official bribery statute. But the Supreme Court has limited the scope of legislative activity that is protected under the clause by upholding grand jury inquiry into the possession and nonlegislative use of classified documents by a Member. Gravel *v.* United States, 408 U.S. 606 (1972). The Court has also sustained the validity of an indictment of a Member for accepting an illegal bribe to perform legislative acts where the prosecution established a prima facie case without relying on the Member's constitutionally-protected legislative speech. United States *v.* Brewster, 408 U.S. 501 (1972). Nor does the clause protect transmittal of allegedly defamatory material issued in press releases and newsletters by a Senator, as neither was essential to the deliberative process of the Senate. Hutchinson *v.* Proxmire, 443 U.S. 111 (1979). A complaint against an officer of the House relating to the dismissal of an official reporter of debates has been held nonjusticiable on the basis that her duties were directly related to the due functioning of the legislative process. Browning *v.* Clerk, 789 F.2d 923 (D.C. Cir. 1986), cert. den. 479 U.S. 996 (1986). For a discussion of waivers of the Speech and Debate clause, see §301, *infra*.

Legislative employees acting under orders of the House are not necessarily protected under the clause from judicial inquiry into the constitutionality of their actions. Kilbourn *v.* Thompson, 103 U.S. 165 (1880); Dombrowski *v.* Eastland, 387 U.S. 82 (1967); Powell *v.* McCormack, 395 U.S. 486 (1969). But see Gravel *v.* United States, 408 U.S. 606 (1972), where the Supreme Court held that the aide of a Senator was protected under the clause when performing legislative acts that would have been protected under the clause if performed by the Senator himself. There is no distinction between the Members of a Senate subcommittee and its chief counsel insofar as complete immunity under the Speech and Debate

Clause is provided for the issuance of a subpoena pursuant to legitimate legislative inquiry. Eastland *v.* U.S. Servicemen's Fund, 421 U.S. 491 (1975). See also Doe *v.* McMillan, 412 U.S. 306 (1973) (relating to the dissemination of a congressional report) for the immunity under this clause of Members of the House and their staffs, and for the common-law immunity of the Public Printer and Superintendent of Documents.

For Federal court decisions on the applicability of the clause to unofficial circulation of reprints from the Congressional Record, see McGovern *v.* Martz, 182 F. Supp. 343 (1960); Long *v.* Ansell, 69 F.2d 386 (1934), aff'd, 293 U.S. 76 (1934); Methodist Federation for Social Action *v.* Eastland, 141 F. Supp. 729 (1956). For inquiry into a Member's use of the franking privilege, see Hoellen *v.* Annunzio, 468 F.2d 522 (1972), cert. denied, 412 U.S. 953 (1973); Schiaffo *v.* Helstoski, 350 F. Supp. 1076 (1972), rev'd 492 F.2d 413 (1974). For inquiry into the printing of committee reports, see Doe *v.* McMillan, 412 U.S. 306 (1973); Hentoff *v.* Ichord, 318 F. Supp. 1175 (1970).

§ 94. Action by the House.

For assaulting a Member for words spoken in debate, Samuel Houston, not a Member, was arrested, tried, and censured by the House (II, 1616–1619). Where Members have assaulted other Members for words spoken in debate (II, 1656), or proceeded by duel (II, 1644), or demanded explanation in a hostile manner (II, 1644), the House has considered the cases as of privilege. A communication addressed to the House by an official in an Executive Department calling in question words uttered by a Member in debate was criticized as a breach of privilege and withdrawn (III, 2684). An explanation having been demanded of a Member by a person not a Member for a question asked of the latter when a witness before the House, the matter was considered but not pressed as a breach of privilege (III, 2681). A letter from a person supposed to have been assailed by a Member in debate, asking properly and without menace if the speech was correctly reported, was held to involve no question of privilege (III, 2682). Unless it be clear that a Member has been questioned for words spoken in debate, the House declines to act (II, 1620; III, 2680).

For assaulting a Member, Charles C. Glover was arrested, arraigned at the bar of the House, and censured by the Speaker by direction of the House, although the provocation of the assault was words spoken in debate in the previous Congress (VI, 333).

§ 95. Decisions of the Court.

Decisions of the Supreme Court of the United States: Kilbourn *v.* Thompson, 103 U.S. 168 (1881); Tenney *v.* Brandhove, 341 U.S. 367 (1951); United States *v.* Johnson, 383 U.S. 169 (1966); Dombrowski *v.* Eastland, 387 U.S. 82 (1967); Powell *v.* McCormack, 395 U.S. 486 (1969); Gravel *v.* United States, 408 U.S. 606 (1972); United States *v.* Brewster, 408 U.S. 501 (1972); United States *v.* Helstoski, 442 U.S. 477 (1979); Hutchinson *v.* Proxmire, 443 U.S. 111 (1979).

§ 96. Restriction on appointment of Members to office.

2 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; * * *.

In a few cases questions have arisen under this paragraph (I, 506, footnote; and see 42 Op. Att'y Gen. 36 (1969); see also Deschler, ch. 7).

§ 97. Members not to hold office under the United States.

* * * and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

The meaning of the word "office" as used in this paragraph has been discussed (I, 185, 417, 478, 493; II, 993; VI, 60, 64), as has also the general subject of incompatible offices (I, 563).

§ 98. As to what are incompatible offices.

The Judiciary Committee has concluded that members of commissions created by law to investigate and report, but having no legislative, executive, or judicial powers, and visitors to academies, regents, directors, and trustees of public institutions, appointed under the law by the Speaker, are not officers within the meaning of the Constitution (I, 493). Membership on joint committees created by statute is not an office in the contemplation of the constitutional provision prohibiting Members of Congress from holding simultaneously other offices under the United States (VII, 2164). A Member of either House is eligible to appointment to any office not forbidden him by law, the duties of which are not incompatible with those of a Member (VI, 63) and the question as to whether a Member may be appointed to the Board of Managers of the Soldiers' Home and become local manager of one of the Homes, is a matter for the decision of Congress itself (VI, 63). The House has also distinguished between the performance of paid services for the Executive (I, 495), like temporary service as assistant United States attorney (II, 993), and the acceptance of an incompatible office. The House has declined to hold that a contractor under the Government is constitutionally disqualified to serve as a Member (I, 496). But the House, or its committees, have found disqualified a Member who was appointed a militia officer in the District of Columbia (I, 486) and in various States (VI, 60), and Members who have accepted commissions in the Army (I, 491, 492, 494). But the Judiciary Committee has expressed the opinion that persons on the retired list of the Army do not hold office under the United States in the constitutional sense (I, 494). A Member-elect has continued to act as governor of a State after the assembling of the Congress to which he was elected (I, 503), but 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 (VI, 65).

§ 99. Appointment of Members-elect to offices under the United States.

The House decided that the status of a Member-elect was not affected by the constitutional requirement (I, 499), the theory being advanced that the status of the Member-elect is distinguished from the status of the Member who has qualified (I, 184). A Member-elect, who continued in an office after his election but resigned before taking his seat, was held entitled to the seat (I, 497, 498). However, when a Member-elect held an incompatible office after the meeting of Congress and his taking of the oath, he was held to have disqualified himself (I, 492). In other words, the Member-elect may defer until the meeting of Congress and his taking of the oath, his choice between the seat and an incompatible office (I, 492). As early as 1874 the Attorney General opined that a Member-elect is not officially a Member of the House, and thus may hold any office until sworn (14 Op. Att'y Gen. 408 (1874)).

§ 100. Relation of contestants to incompatible offices.

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 (I, 505). Although a contestant had accepted and held a State office in violation of the State constitution, if he were really elected a Congressman, the House did not treat his contest as abated (II, 1003). Where a Member had been appointed to an incompatible office a contestant not found to be elected was not admitted to fill the vacancy (I, 807).

§ 101. Procedure of the House when incompatible offices are accepted.

Where a Member has accepted an incompatible office, the House has assumed or declared the seat vacant (I, 501, 502; VI, 65). In the cases of Baker and Yell, the Elections Committee concluded that the acceptance of a commission as an officer of volunteers in the national army vacated the seat of a Member (I, 488), and in another similar case the Member was held to have forfeited his right to a seat (I, 490). The House has seated a person bearing regular credentials on ascertaining that his predecessor in the same Congress had accepted a military office (I, 572). But usually the House by resolution formally declares the seat vacant (I, 488, 492). A Member-elect may defer until the meeting of Congress and his taking of the oath of office his choice between the seat and an incompatible office (I, 492). But when he retains the incompatible office and does not qualify, a vacancy has been held to exist (I, 500). A resolution excluding a Member who has accepted an incompatible office may be agreed to by a majority vote (I, 490). A Member charged with acceptance of an incompatible office was heard in his own behalf during the debate (I, 486).

Where it was held in Federal court that a Member of Congress may not hold a commission in the Armed Forces Reserve under this clause, the U.S. Supreme Court reversed on other grounds, the plaintiff's lack of standing to maintain the suit. Reservists Committee to Stop the War *v.* Laird, 323 F. Supp. 833 (1971), aff'd, 595 F.2d 1075 (1972), rev'd on other grounds, 418 U.S. 208 (1974).

§102. Bills raising revenue to originate in the House.

SECTION 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

This provision has been the subject of much discussion (II, 1488, 1494). In the earlier days the practice was not always correct (II, 1484); but in later years the House has insisted on its prerogative and the Senate has often shown reluctance to infringe thereon (II, 1482, 1483, 1493). In several instances, however, the subject has been matter of contention, conference (II, 1487, 1488), and final disagreement (II, 1485, 1487, 1488). Sometimes, however, when the House has questioned an invasion of prerogative, the Senate has receded (II, 1486, 1493). The disagreements have been especially vigorous over the right of the Senate to concur with amendments (II, 1489), and while the Senate has acquiesced in the sole right of the House to originate revenue bills, it has at the same time held to a broad power of amendment (II, 1497–1499). The House has frequently challenged the Senate on this point (II, 1481, 1491, 1496; Sept. 14, 1965, p. 23632). When the House has perceived an invasion of its prerogative, it has ordered the bill or Senate amendment to be returned to the Senate (II, 1480–1499; VI, 315, 317; Mar. 30, 1937, p. 2930; July 2, 1960, p. 15818; Oct. 10, 1962, p. 23014; May 20, 1965, p. 11149; June 20, 1968, p. 22127; Nov. 8, 1979, p. 31518; May 17, 1983, p. 12486; Oct. 1, 1985, p. 25418; Sept. 25, 1986, p. 26202; July 30, 1987, p. 21582; June 16, 1988, p. 14780; June 21, 1988, p. 15425; Sept. 23, 1988, p. 25094; Sept. 28, 1988, p. 26415; Oct. 21, 1988, pp. 33110–11; June 15, 1989, p. 12167; Nov. 9, 1989, p. 28271; Oct. 22, 1991, p. 27087; Oct. 31, 1991, p. 29284; Feb. 25, 1992, p. 3377; July 14, 1994, p. 16593; July 21, 1994, p. 17280; July 21, 1994, p. 17281; Aug. 12, 1994, pp. 7642, 7643; Oct. 7, 1994, p. 29136, 29137; Mar. 21, 1996, p. 5950; Apr. 16, 1996, pp. 7642, 7643; Sept. 27, 1996, p. 25542; Sept. 28, 1996, p. 25931; Mar. 5, 1998, p. 2618; Oct. 15, 1998, p. 26483; July 15, 1999, p. 16317; Nov. 18, 1999, p. 30732; Oct. 24, 2000, p. 24149; Sept. 20, 2001, p. 17454), or declined to proceed further with it (II, 1485). Among the measures the House has returned to the Senate: a Senate-passed bill providing for the sale of Conrail and containing provisions relating to the tax treatment of the sale, notwithstanding inclusion in that bill of a disclaimer section requiring all revenue provisions therein to be contained in separate legislation originating in the House (Sept. 25, 1986, p. 26202); a Senate-passed bill prohibiting the importation of commodities subject to tariff (July 30, 1987, p. 21582); a Senate-passed bill banning all imports from Iran, a tariff measure as affecting revenue from dutiable imports (June 16, 1988, p. 14780); a Senate-passed bill dealing with the tax treatment of income derived from the exercise of Indian treaty fishing rights (June 21, 1988, p. 15425); a Senate-passed bill creating a tax-exempt government corporation (June 15, 1989, p. 12167); a Senate-passed bill addressing the tax treatment of police-corps scholarships and the regulation of firearms under the Internal Revenue Code (Oct. 22, 1991, p. 27087); a Senate-passed bill including certain import sanctions in an export administration statute (Oct. 31, 1991, p. 29284); a Senate-passed bill requiring the President to impose sanctions including import restrictions against countries that fail to eliminate large-scale driftnet fishing (Feb. 25, 1992, p. 3377); a Senate amendment to a general appropriation bill prohibiting funds for the Internal Revenue Service to enforce a requirement to use undyed diesel fuel for use in recreational boats (July 14, 1994, p. 16593); a Senate-passed bill proposing to regulate toxic substances by prohibiting the import of products containing more than specified level of lead (July 21, 1994, p. 17280); a Senate amendment to a general appropriation bill proposing a user fee raising revenue to finance broader activities of the agency imposing the levy, thereby raising general revenue (Aug. 12, 1994, p. 21656); a Senate-passed bill proposing to repeal a fee on electricity generated by nuclear energy that otherwise would raise revenue (Mar. 5, 1998, p. 2618); a Senate-passed bill proposing new import restrictions on products containing any substance derived from rhinoceroses or tigers (Oct. 15, 1998, p. 26483); Senate-passed bills proposing an amendment to the criminal code that would make it unlawful to import certain assault weapons (Oct. 22, 1991, p. 27087) or to import large capacity ammunition feeding devices (July 15, 1999, p. 16317); Senate-passed bills prescribing the tax treatment of certain benefits to members of the Armed Forces (Nov. 18, 1999, p. 30732) or of public-sector retirement plans (Nov. 18, 1999, p. 30734); a Senate-passed bill proposing to create a new basis for applying import restrictions on bear viscera or products derived therefrom (Oct. 24, 2000, p. 24149); a Senate amendment proposing to enact by reference a Senate bill providing for a ban on (dutiable) imports of diamonds from certain countries (Sept. 20, 2001, p. 17454). The House laid on the table a resolution asserting that a conference report (on which the House was acting first) accompanying a House bill originated provisions in derogation of the constitutional prerogative of the House and resolving that such bill be recommitted to conference (July 27, 2000, p. 16565).

A bill raising revenue incidentally was held not to infringe upon the constitutional prerogative of the House to originate revenue legislation (VI, 315). Discussion of differentiation between bills for the purpose of raising revenue and bills that incidentally raise revenue (VI, 315). A question relating to the invasion of the constitutional prerogatives of the House by a Senate amendment may be raised at any time when the House is in possession of the papers, but not otherwise; thus, the question has been presented pending the motion to call up a conference report on the bill (June 20, 1968, Deschler, ch. 13, § 14.2; Aug. 19, 1982, p. 22127), but has been held nonprivileged with respect to a bill already presented to the President (Apr. 6, 1995, p. 10700). On January 16, 1924, p. 1027, the Senate decided that a bill proposing a gasoline tax in the District of Columbia should not originate in the Senate (VI, 316).

Clause 5(a) of rule XXI prohibits consideration of any amendment, including any Senate amendment, proposing a tax or tariff measure during consideration of a bill or joint resolution reported by a committee not having that jurisdiction (§ 1066, *infra*).

For a discussion of the prerogatives of the House under this clause, and discussion of the prerogatives of the House to originate appropriation bills, see Deschler, ch. 13. For a discussion of the prerogatives of the House with respect to treaties affecting revenue, see § 597, *infra*. For examples of Senate messages requesting the return of Senate measures that intruded on the Constitutional prerogative of the House to originate revenue measures, see § 565, *infra*.

§ 103. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); Twin City Bank *v.* Nebeker, 167 U.S. 196 (1897); Flint *v.* Stone Tracy Co., 220 U.S. 107 (1911); Millard *v.* Roberts, 202 U.S. 429 (1906); Rainey *v.* United States, 232 U.S. 310 (1914); United States *v.* Munoz-Flores, 495 U.S. 385 (1990).

§ 104. Approval and disapproval of bills by the President.

2 Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the

Persons voting for and against the Bill shall be entered on the Journal of each House respectively. * * *.

§ 105. The act of approval.

Under the usual practice, bills are considered to have been presented to the President at the time they are delivered to the White House. In 1959, bills delivered to the White House while the President was abroad were held for presentation to the President upon his return to the United States by the White House. The United States Court of Claims held, in Eber Bros. Wine and Liquor Corp. *v.* United States, 337 F.2d 624 (1964), cert. denied, 380 U.S. 950 (1965), that where the President had determined, with the informal acquiescence of leaders of Congress, that bills from the Congress were to be received at the White House only for presentation to him upon his return to the United States and the bill delivered to the White House was so stamped, the Presidential veto of the bill more than 10 days after delivery to the White House but less than 10 days after his return to the country was timely. The second session of the 89th Congress adjourned sine die while President Johnson was on an Asian tour and receipts for bills delivered to the White House during that time were marked in like manner. The approval of a bill by the President of the United States is valid only with his signature (IV, 3490). Before the adoption of the 20th amendment to the Constitution, at the close of a Congress, when the two Houses prolonged their sessions into the forenoon of March 4, the approvals were dated on the prior legislative day, as the legislative portion of March 4 belonged to the term of the new Congress. In one instance, however, bills signed on the forenoon of March 4 were dated as of that day with the hour and minute of approval given with the date (IV, 3489). The 20th amendment to the Constitution changed the date of meeting of the Congress to January 3d. The act of President Tyler in filing with a bill an exposition of his reasons for signing it was examined and severely criticized by a committee of the House (IV, 3492); and in 1842 a committee of the House discussed the act of President Jackson in writing above his signature of approval a memorandum of his construction of the bill (IV, 3492). But where the President has accompanied his message announcing the approval with a statement of his reasons there has been no question in the House (IV, 3491). The statutes require that bills signed by the President shall be received by the Archivist of the United States and deposited in his office (1 U.S.C. 106a). Formerly these bills were received by the Secretary of State (IV, 3485) and deposited in his office (IV, 3429).

§ 106. Notice of approval sent by message.

Notice of the signature of a bill by the President is sent by message to the House in which it originated (VII, 1089) and that House informs the other (IV, 3429). But this notice is not necessary to the validity of the act (IV, 3495). Sometimes, at the close of a Congress the President informs the House of such bills as he has approved and of such as he has allowed to fail (IV, 3499–3502). In one instance he communicated his omission to sign a bill through the committee appointed to notify him that Congress was about to adjourn (IV, 3504). A bill that had not actually passed having been signed by the President, he disregarded it and a new bill was passed (IV, 3498). Messages of the President giving notice of bills approved are entered in the Journal and published in the Congressional Record (V, 6593).

§ 107. Disapproval (or veto) of bills.

A message withholding approval of a bill, called a veto message, is sent to the House in which the bill originated; but it has been held that such a message may not be returned to the President on his request after it has been laid before the Senate (IV, 3521). In one instance a veto message that had not been laid before the House was returned to the President on his request (Aug. 1, 1946, p. 10651). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business (IV, 3537; VII, 1109). A veto message may not be read in the absence of a quorum, even though the House be about to adjourn sine die (IV, 3522; VII, 1094); but the message may be read and acted on at the next session of the same Congress (IV, 3522). When the President has been prevented by adjournment from returning a bill with his objections he has sometimes at the next session communicated his reasons for not approving (V, 6618–6620).

Although the ordinary form of a return veto is a message under seal returning the enrollment with a statement of the President's objections, an enrolled House bill returned to the Clerk during the August recess with a "memorandum of disapproval" setting forth the objections of the President was considered as a return veto (Sept. 11, 1991, p. 22643).

§ 108. Consideration of a vetoed bill in the House.

It is possible, although not invariable, that a bill returned with the objections of the President shall be voted on at once (IV, 3534–3536) and when laid before the House the question on the passage is considered as pending and no motion from the floor is required (VII, 1097–1099), but it has been held that the constitutional mandate that "the House shall proceed to consider" means that the House shall immediately proceed to consider it under the Rules of the House, such that the ordinary motions under the Rules of the House (*e.g.*, to refer or to postpone to a day certain) are in order (IV, 3542–3550; VII, 1100, 1105, 1113; Speaker Wright, Aug. 3, 1988, p. 20280) and (for the stated examples) debatable under the hour rule (VIII, 2740). Although under clause 4 of rule XVI, and under the precedents the motion for the previous question takes precedence over motions to postpone or to refer when a question is under debate, where the Speaker has laid before the House a veto message from the President but has not yet stated the question to be on overriding the veto, that question is not "under debate" and the motion for the previous question does not take precedence (Speaker Wright, Aug. 3, 1988; Procedure, ch. 24, § 15.8). A resolution asserting that to recognize for a motion to refer a veto message before stating the question on overriding the veto would interfere with the constitutional prerogative of the House to proceed to that question, and directing the Speaker to state the question on overriding the veto as pending before recognizing for a motion to refer, did not give rise to a question of the privileges of the House (Speaker Wright, Aug. 3, 1988, p. 20281). A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider" (IV, 3550; VII, 1104, 1105, 1108, 1114), and in the 101st Congress, a veto pending as unfinished business was referred with instructions to consider and report promptly (Jan. 24, 1990, p. 421). But while the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to recommit it pending the demand for the previous question or after it is ordered (IV, 3551; VII, 1102). When a veto message is before the House for consideration de novo or as unfinished business, a motion to refer the message to committee takes precedence over the question of passing the bill, the objections of the President to the contrary notwithstanding (Procedure, ch. 24, § 15.8; Oct. 25, 1983, p. 29188), but the motion to refer may be laid on the table (Oct. 25, 1983, p. 29188). A vetoed bill having been rejected by the House, the message was referred (IV, 3552; VII, 1103). Committees to which vetoed bills have been referred have sometimes neglected to report (IV, 3523, 3550, footnotes; VII, 1108, 1114).

A vetoed bill may be laid on the table (IV, 3549; VII, 1105), but it is still highly privileged and a motion to take it from the table is in order at any time (IV, 3550; V, 5439). Also a motion to discharge a committee from the consideration of such a bill is privileged (IV, 3532; Aug. 4, 1988, p. 20365; Sept. 19, 1996, p. 23815) and (in the modern practice) is debatable (Mar. 7, 1990, p. 3620) but is subject to the motion to lay on the table (Sept. 7, 1965, p. 22958; Aug. 4, 1988, p. 20365). When the motion to discharge is agreed to, the veto message is pending as unfinished business (Mar. 7, 1990, p. 3621). While a vetoed bill is always privileged, the same is not true of a bill reported in lieu of it (IV, 3531; VII, 1103).

§ 109. Action on a vetoed bill.

If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House also agree, it becomes a law (IV, 3520). The yeas and nays are required to pass a bill over the President's veto (art. I, sec. 7; IV, 2726, 3520; VII, 1110). The two-thirds vote required to pass the bill is two-thirds of the Members present and voting and not two-thirds of the total membership of the House (IV, 3537, 3538; Missouri Pac. Ry. Co. *v.* Kansas, 248 U.S. 276 (1919)). Only Members voting should be considered in determining whether two-thirds voted in the affirmative (VII, 1111). The motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President (V, 5644; VIII, 2778).

It is the practice for one House to inform the other by message of its decision that a bill returned with the objections of the President shall not pass (IV, 3539–3541). A bill passed notwithstanding the objections of the President is sent by the presiding officer of the House that last acts on it to the Archivist, who receives it and deposits it in his office (1 U.S.C. 106a). Formerly these bills were sent to the Secretary of State (IV, 3524) and deposited in his office (IV, 3485).

§ 110. Errors in bills sent to the President.

A bill incorrectly enrolled has been recalled from the President, who erased his signature (IV, 3506). Bills sent to the President but not yet signed by him are sometimes recalled by concurrent resolution of the two Houses (IV, 3507–3509; VII, 1091; Sept. 4, 1962, p. 18405; May 6, 1974, p. 13076), and amended; but this proceeding is regarded as irregular (IV, 3510–3518). When the two Houses of Congress request the President by concurrent resolution to return an enrolled bill delivered to him and the President honors the request, the ten-day period under this clause runs anew from the time the bill is re-enrolled and is again presented to the President. Thus, in the 93d Congress the President returned on May 7, 1974 a bill pursuant to the request of Congress (H. Con. Res. 485, May 6, 1974, p. 13076). The bill was again enrolled, presented to the President on May 7, and marked "received May 7" at the White House. An error in an enrolled bill that has gone to the President may also be corrected by a joint resolution (IV, 3519; VII, 1092). In the 99th Congress, two enrollments of a continuing appropriation bill for FY 1987 were presented to and signed by the President, the second correcting an omission in the first (see P.L. 99–500 and 99–591). In Clinton *v.* City of New York, 524 U.S. 417 (1998), the Supreme Court held that the cancellation procedures of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution. For a discussion of the operation of the Act during the period of its effectiveness, see § 1130, *infra*.

§ 110a. Decisions of the Court.

Decisions of the Supreme Court of the United States: Matthews *v.* Zane, 20 U.S. (7 Wheat.) 164 (1822); Gardner *v.* Collector, 73 U.S. (6 Wall.) 499 (1868); Lapeyre *v.* United States, 84 U.S. (17 Wall.) 191 (1873); La Abra Silver Mining Co. *v.* United States, 175 U.S. 423 (1899); Missouri Pacific Railway Co. *v.* Kansas, 248 U.S. 276 (1919); Edwards *v.* United States, 286 U.S. 482 (1932); Wright *v.* United States, 302 U.S. 583 (1938); Clinton *v.* City of New York, 524 U.S. 417 (1998).

§ 111. Bills that become laws without the President's approval.

* * * If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

A bill signed by the President within 10 days (Sunday excepted) after it has been presented to him becomes a law even though such signing takes place when Congress is not in session, whether during the period of an adjournment to a day certain or after the final adjournment of a session. Presidents currently sign bills after sine die adjournment but within 10 days after their receipt. President Truman signed several bills passed in the 81st Congress after the convening of the 82d Congress but within 10 days (P.L. 910–921; 64 Stat. 1221–1257); and President Reagan approved bills passed in the 97th Congress that were presented after the convening of the 98th Congress. It was formerly contended that the President might not approve bills during a recess (IV, 3493, 3494), and in one instance, in 1864, when the President signed a bill after final adjournment of Congress but within 10 days grave doubts were raised and an adverse report was made by a House committee (IV, 3497). Later opinions of the Attorney General have been to the effect that the President has the power to approve bills within 10 days after they have been presented to him during the period of an adjournment to a day certain (IV, 3496) and after an adjournment sine die (VII, 1088). The Supreme Court has held valid as laws bills signed by the President within 10 days during a recess for a specified time (La Abra Silver Mining Co. *v.* United States, 175 U.S. 451 (1899); IV, 3495) and also those signed after an adjournment sine die (Edwards *v.* United States, 286 U.S. 482 (1932)).

§ 112. The pocket veto.

A bill that is passed by both Houses of Congress during the first regular session of a Congress and presented to the President less than 10 days (Sundays excepted) before the sine die adjournment of that session, but is neither signed by the President, nor returned by him to the House in which it originated, does not become a law ("The Pocket Veto Case," 279 U.S. 655 (1929); VII, 1115). President Truman during an adjournment to a day certain pocket vetoed several bills passed by the 81st Congress and also, after the convening of the 82d Congress, pocket vetoed one bill passed in the 81st Congress. The Supreme Court has held that the adjournment of the House of origin for not exceeding three days while the other branch of the Congress remained in session, did not prevent a return of the vetoed bill to the House of origin. Wright *v.* United States, 302 U.S. 583 (1938).

§ 113. Effect of adjournment to a day certain.

Doubt has existed as to whether a bill that remains with the President 10 days without his signature, Congress meanwhile before the tenth day having adjourned to a day certain, becomes a law (IV, 3483, 3496; VII, 1115); an opinion of the Attorney General in 1943 stated that under such circumstances a bill not signed by the President did not become a law (40 Op. Att'y Gen. 274 (1943)). However, more recently, where a Member of the Senate challenged in Federal court the effectiveness of such a pocket veto, a United States Court of Appeals held that a Senate bill could not be pocket-vetoed by the President during an "intrasession" adjournment of Congress to a day certain for more than three days, where the Secretary of the Senate had been authorized to receive Presidential messages during such adjournment. Kennedy *v.* Sampson, 511 F.2d 430 (D.C. Cir., 1974). See also Kennedy *v.* Jones, 412 F. Supp. 353 (D.D.C. 1976). Following a consent decree in this case, it was announced that President Ford would utilize a "return" veto, subject to override, in intersession and intrasession adjournments where authority exists for the appropriate House to receive such messages notwithstanding the adjournment.

In the 101st Congress, when President Bush returned an enrolled bill during the intersession adjournment, not by way of message under seal but with a "memorandum of disapproval" setting forth his objections, the House treated it as a return veto subject to override under article I, section 7 (Jan. 23, 1990, p. 4). Similarly, in the 102d Congress, an enrolled House bill returned to the Clerk during the August recess, not by way of message under seal but with a "memorandum of disapproval" setting forth the objections of the President, was considered as a return veto (Sept. 11, 1991, p. 22643). Also in the 102d Congress, President Bush purported on December 20, 1991, to pocket veto a bill (S. 1176) that was presented to him on December 9, 1991, notwithstanding that the Congress was in an intrasession adjournment (from Nov. 27, 1991, until 11:55 a.m., Jan. 3, 1992) rather than an adjournment sine die (see Jan. 23, 1992 [Daily Digest]); and during debate on a subsequent bill (S. 2184) purporting to repeal the provisions of S. 1176 and to enact instead provisions acceding to the objections of the President, the Speaker inserted remarks on the pocket veto in light of modern congressional practice concerning the receipt of messages and communications during recesses and adjournments (Mar. 3, 1992, p. 4081).

In the 93d Congress, the President returned a House bill without his signature to the Clerk of the House, who had been authorized to receive messages from the President during an adjournment to a day certain, and the President asserted in his veto message that he had "pocket vetoed" the bill during the adjournment of the House to a day certain. The House regarded the President's return of the bill without his signature as a veto within the meaning of article I, section 7 of the Constitution and proceeded to reconsider and to pass the bill over the President's veto, after postponing consideration to a subsequent day (motion to postpone, Nov. 18, 1974, p. 36246; veto override, Nov. 20, 1974, p. 36621). Subsequently, on November 21, 1974, the Senate also voted to override the veto (p. 36882) and pursuant to 1 U.S.C. 106a the Enrolling Clerk of the Senate forwarded the bill to the Archives for publication as a public law. The Administrator of General Services at the Archives (now Archivist), upon instructions from the Department of Justice, declined to promulgate the bill as public law on the day received. The question as to the efficacy of the congressional action in passing the bill over the President's veto was mooted when the House and Senate passed on November 26, 1974 (pp. 37406, 37603), an identical bill that was signed into law on December 7, 1974 (P.L. 93–516). On similar occasions, when the President has asserted a "pocket veto," the House has regarded the President's actual return of the bill without his signature as a veto within the meaning of article I, section 7 of the Constitution and proceeded to reconsider the bill over the President's objections (Jan. 23, 1990, p. 3; Sept. 6, 2000, p. 17156; Nov. 13, 2000, p. 26022).

As part of the concurrent resolution providing for the sine die adjournments of the first sessions of the 101st Congress and 105th Congress, the Congress reaffirmed its position that an intersession adjournment did not prevent the return of a bill where the Clerk and the Secretary of the Senate were authorized to receive messages during the adjournment (H. Con. Res. 239, Nov. 21, 1989, p. 31156; S. Con. Res. 68, Nov. 13, 1997, p. 26538). For the views of the Speaker, the Minority Leader, and the Attorney General concerning pocket veto authority during an intrasession adjournment, see correspondence inserted in the Congressional Record (Jan. 23, 1990, p. 3; Sept. 19, 2000, p. 18594; Nov. 13, 2000, p. 26022); and for discussions of the constitutionality of intersession or intrasession pocket vetoes see Kennedy, "Congress, The President, and The Pocket Veto," 63 Va. L. Rev. 355 (1977), and Hearing, Subcommittee on Legislative Process, Committee on Rules, on H.R. 849, 101st Congress.

§ 114. Decisions of the Court.

Decisions of the Supreme Court of the United States: La Abra Silver Mining Co. *v.* United States, 175 U.S. 423 (1899); Wilkes County *v.* Coler, 180 U.S. 506 (1901); the Pocket Veto Case, 279 U.S. 655 (1929); Edwards *v.* United States, 286 U.S. 482 (1932); Wright *v.* United States, 302 U.S. 583 (1938); Burke *v.* Barnes, 479 U.S. 361 (1987) (vacating and remanding as moot the decision *sub nom.* Barnes *v.* Kline, 759 F.2d 21 (D.C. Cir. 1984)).

§ 115. As to presentation of orders and resolutions for approval.

3 Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

It has been settled conclusively that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval (V, 7040; Hollingsworth *v.* Virginia, 3 U.S. (3 Dall.) 378 (1798)). Such joint resolutions, after passage by both Houses, are presented to the Archivist (1 U.S.C. 106b). Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect (IV, 3483, 3484), something not within the scope of the modern form of concurrent resolutions.

For discussion of Presidential approval of a joint resolution extending the period for State ratification of a constitutional amendment already submitted to the States, see § 192, *infra*. For discussion of "Statutory Legislative Procedures" contained in public laws, see § 1130, *infra*.

§ 116. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892); Fourteen Diamond Rings *v.* United States, 183 U.S. 176 (1901); INS *v.* Chadha, 462 U.S. 919 (1983); Process Gas Consumer's Group *v.* Consumer Energy Council of America 463 U.S. 1216 (1983).

SECTION 8. The Congress shall have Power [1]

§ 117. The revenue power.

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

§ 118. The borrowing power.

[2] To borrow Money on the credit of the United States:

§ 119. Power over commerce.

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

§ 120. Naturalization and bankruptcy.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

§ 121. Coinage, weight, and measures.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

§ 122. Counterfeiting.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

§ 123. Post-offices and post-roads.

7 To establish Post Offices and Post Roads;

§ 124. Patents and copyrights.

8 To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

§ 125. Inferior courts.

9 To constitute Tribunals inferior to the supreme Court;

§ 126. Piracies and offenses against law of nations.

10 To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

§ 127. Declarations of war and maritime operations.

11 To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

§ 128. War powers of Congress and the President.

In the 93d Congress, the Congress passed over the President's veto Public Law 93–148, relating to the power of Congress to declare war under this clause and the power of the President as Commander in Chief under article II, section 2, clause 1 (§ 178, *infra*). The law requires that the President report to Congress on the introduction of United States Armed Forces in the absence of a declaration of war. The President must terminate use of the Armed Forces unless Congress, within 60 calendar days after a report is submitted or is required to be submitted, (1) declares war or authorizes use of the Armed Forces; (2) extends by law the 60-day period; or (3) is physically unable to meet as result of armed attack. The Act also provided that Congress could adopt a concurrent resolution requiring the removal of Armed Forces engaged in foreign hostilities, a provision that should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983). Sections 6 and 7 of the Act provide congressional procedures for joint resolutions, bills, and concurrent resolutions introduced pursuant to the provisions of the Act (see § 1130, *infra*). For further discussion of that Act, and war powers generally, see Deschler, ch. 13.

§ 129. Raising and support of armies.

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

§ 130. Provisions for a navy.

[13] To provide and maintain a Navy;

§ 131. Land and naval forces.

[14] To make Rules for the Government and Regulation of the land and naval Forces;

§ 132. Calling out the militia.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

§ 133. Power over militia.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

§ 134. Power over territory of the United States.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

§ 135. Congressional authority over the District of Columbia.

Congress has provided by law that "all that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States" (4 U.S.C. 71). Pursuant to its authority under this clause, Congress provided in 1970 for the people of the District of Columbia to be represented in the House of Representatives by a Delegate and for a Commission to report to the Congress on the organization of the government of the District of Columbia (P.L. 91–405; 84 Stat. 845). For the powers and duties of the Delegate from the District of Columbia, see rule III (§ 675, *infra*) and Deschler, ch. 7, § 3. In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act, which reorganized the governmental structure of the District, provided a charter for local government subject to acceptance by a majority of the registered qualified voters of the District, delegated certain legislative powers to the District, and implemented certain recommendations of the Commission on the Organization of the Government of the District of Columbia (P.L. 93–198; 87 Stat. 774). Section 604 of that Act provides for congressional action on certain district matters by providing a procedure for approval and disapproval of certain actions by the District of Columbia Council. The section, as amended by Public Law 98–473, permits a highly privileged motion to discharge a joint resolution of approval or disapproval that has not been reported by the committee to which referred within 20 calendar days after its introduction (see § 1130, *infra*).

§ 136. General legislative power.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

§ 137. Migration or importation of persons.

SECTION 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

§138. Writ of habeas corpus.

2 The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

§139. Bills of attainder and ex post facto laws.

3 No Bill of Attainder or ex post facto Law shall be passed.

§140. Capitation and direct taxes.

4 [No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.]

This provision was changed in 1913 by the 16th amendment.

§141. Export duties.

5 No Tax or Duty shall be laid on Articles exported from any State.

§142. Freedom of commerce.

6 No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

§143. Appropriations and accounting of public money.

7 No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

§144. Titles of nobility and gifts from foreign states.

8 No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

§ 145. Foreign gifts and decorations.

Consent has been granted to officers and employees of the government, under enumerated conditions, to accept certain gifts and decorations from foreign governments (see 5 U.S.C. 7342). The adoption of this act largely has obviated the practice of passing private bills to permit the officer or employee to retain the award. However, where the Speaker (who was one of the officers empowered by an earlier law to approve retention of decorations by Members of the House) was himself tendered an award from a foreign government, a private law (Private Law 91–244) was enacted to permit him to accept and wear the award so that he would not be in the position of reviewing his own application under the provisions of the law.

Public Law 95–105 amended the Foreign Gifts and Decorations Act (now 5 U.S.C. 7342) to designate the Committee on Standards of Official Conduct of the House of Representatives as the employing agency for the House with respect to foreign gifts and decorations received by Members and employees; under that statute the Committee may approve the acceptance of foreign decorations and has promulgated regulations to carry out the Act with respect to Members and employees (Jan. 23, 1978, p. 452), and disposes of foreign gifts that may not be retained by the donee.

Opinions of Attorneys General:

Gifts from Foreign Prince, 24 Op. Att'y Gen. 117 (1902); Foreign Diplomatic Commission, 13 Op. Att'y Gen. 538 (1871); Marshal of Florida, 6 Op. Att'y Gen. 409 (1854).

§ 146. States not to make treaties, coin money, pass ex post facto laws, impair contracts, etc.

SECTION 10. 1 No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

§ 147. States not to lay imposts or duties.

2 No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the

United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

§ 148. States not to lay tonnage taxes, make compacts, or go to war.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

§ 149. Terms of the President and Vice President.

SECTION 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four years, and together with the Vice President, chosen for the same Term, be elected, as follows:

§ 150. Commencement of President's term of office.

George Washington took the oath of office, as the first President on April 30, 1789 (III, 1986). The two Houses of the First Congress found, after examination by a joint committee, that by provisions made in the Federal Constitution and by the Continental Congress, the term of the President had, notwithstanding, begun on March 4, 1789 (I, 3). The 20th amendment, declared to have been ratified on February 6, 1933, provides that Presidential terms shall end and successor terms shall begin at noon on January 20. Thus, Franklin D. Roosevelt's first term began on March 4, 1933, but ended at noon on January 20, 1937. Formerly, when March 4 fell on Sunday, the public inauguration of the President occurred at noon on March 5 (III, 1996; VI, 449). Following ratification of the 20th amendment, the first time inauguration day fell on Sunday was January 20, 1957, and Dwight David Eisenhower took the oath for his second term in a private ceremony at the White House on that day followed by a public inauguration ceremony on the steps of the East Front of the Capitol on Monday, January 21, 1957. A similar scenario was followed at the beginning of President Reagan's second term, with the oath being given at the White House on January 20, 1985, followed by a public ceremony on Monday, January 21, in the Rotunda of the Capitol. The 22d amendment provides that no person shall be elected President more than twice.

§ 151. Electors of President and Vice President and their qualifications.

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

§ 152. Questions as to qualifications of electors.

Questions of the qualifications of electors have arisen, and in one instance certain ones were found disqualified, but as their number was not sufficient to affect the result and as there was doubt as to what tribunal should pass on the question the votes were counted (III, 1941). In other cases there were objections, but the votes were counted (III, 1972–1974, 1979). In one instance an elector found to be disqualified resigned both offices, whereupon he was made eligible to fill the vacancy thus caused among electors (III, 1975).

§ 152a. Original provision for failure of electoral college to choose, superseded by 12th amendment.

[3] [The Electors shall meet in their respective States and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Num-

ber be a majority of the whole Number of Electors appointed: and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

This third clause of article II, section 1 was superseded by the 12th amendment (see §§219–223, *infra*).

§153. Time of choosing electors and time at which their votes are given.

[4] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

The time for choosing electors has been fixed on "the Tuesday next after the first Monday in November, in every fourth year"; and the electors in each State "meet and give in their votes on the first Monday after the second Wednesday in December next following their appointment, at such place in each State as the legislature of such State shall direct" (III, 1914; VI, 438; 3 U.S.C. 1, 7). The statutes also provide for transmitting to the President of the Senate certificates of the appointment of the electors and of their votes (III, 1915–1917; VI, 439; 3 U.S.C. 11).

§ 154. Qualifications of President of the United States.

5 No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

§ 155. Succession in case of removal, death, resignation, or disability of President and Vice President.

6 In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

§ 156. Resignation of the President.

Amendment XXV provides for filling a vacancy in the Office of the Vice President and, when the President is unable to perform the duties of his office, for the Vice President to assume those powers and duties as Acting President. During the 93d Congress, President Richard M. Nixon resigned from office on August 9, 1974, by delivering a signed resignation to the Office of the Secretary of State, pursuant to 3 U.S.C. 20. Pursuant to amendment XXV, Vice President Gerald R. Ford became President and the House and Senate confirmed his nominee, Nelson A. Rockefeller, to become Vice President (December 19, 1974, p. 41516).

Congress also has provided for the performance of the duties of the President in case of removal, death, resignation or inability, both of the President and Vice President (3 U.S.C. 19).

§ 157. Compensation of President.

7 The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

The compensation of the President is established by law (3 U.S.C. 102). In addition, the law provides an expense allowance (3 U.S.C. 102) and a travel allowance (3 U.S.C. 103).

§ 158. Oath of the President.

8 Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

§ 159. Inauguration of the President.

The taking of this oath, which is termed the inauguration, is made the occasion of certain ceremonies that are arranged for by a joint committee of the two Houses (III, 1998, 1999; VI, 451). For many years the oath was normally taken at the east portico of the Capitol, although in earlier years it was taken in the Senate Chamber or Hall of the House (III, 1986–1995). On March 4, 1909, owing to inclemency of the weather, the President-elect took the oath and delivered his inaugural address in the Senate Chamber (VI, 447). And when Vice President Fillmore succeeded to the vacancy in the Office of President, Congress being in session, he took the oath in the Hall of the House in the presence of the Senate and House (III, 1997). In 1945 Franklin D. Roosevelt, who had been elected for his fourth term as President, took the oath of office on the south portico at the White House. On August 9, 1974, Gerald R. Ford, who as Vice President succeeded to the Presidency following the resignation of President Nixon on that day, was sworn in in the East Room of the White House. The West Front of the Capitol was first used for the inaugural ceremony for Ronald W. Reagan, Jan. 20, 1981. Because of extreme cold, the public administration of the oath was for the first time held in the Rotunda of the Capitol, rather than on the West Front, as scheduled, on January 21, 1985. Permission for such use is authorized by concurrent resolution (see, *e.g.*, S. Con. Res. 144, 98th Cong. Oct. 9, 1984, p. 30926).

SECTION 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

§ 160. The President the Commander in Chief.

§ 161. Opinions of the President's advisers.

§ 162. President grants reprieves and pardons.

§ 163. War powers of Congress and the President.

In the 93d Congress, the Congress passed over the President's veto Public Law 93–148, relating to the power of Congress to declare war under article I, section 8, clause 11 (§ 127, *supra*) and the power of the President as Commander in Chief. For further discussion of the reports to Congress required and the procedure for congressional action provided under Public Law 93–148, see § 128, *supra*.

§ 164. Pardon of former President.

In 1974, President Ford exercised his power under the last phrase of this clause by pardoning former President Nixon for any crimes he might have committed during a certain period in office (Proclamation 4311, September 8, 1974). The former President had resigned on August 9, 1974, following the decision of the Committee on the Judiciary to report to the House a recommendation of impeachment (H. Rept. 93–1305, Aug. 20, 1974, p. 29219).

§ 165. President makes treaties.

[2]He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the

Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

§166. Appointing power of the President.

The power of the President to appoint diplomatic representatives to foreign governments and to determine their rank is derived from the Constitution and may not be circumscribed by statutory enactments (VII, 1248). In Buckley *v.* Valeo, 424 U.S. 1 (1976) the Supreme Court held that any appointee exercising significant authority (not merely internal delegable authorities within the legislative branch) pursuant to the laws of the United States is an Officer of the United States and must therefore be appointed pursuant to this clause, and that Congress cannot by law vest such appointment authority in its own officers or require that Presidential appointments be subject to confirmation by both Houses. For a discussion of the role of the House with respect to treaties affecting revenue, see §597, *infra*.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

§167. President's power to fill vacancies during recess of the Senate.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; * * *

§168. Messages from the President.

In the early years of the Government the President made a speech to Congress on its assembling (V, 6629), but in 1801 President Jefferson discontinued this practice and transmitted a message in writing. This precedent was followed until April 8, 1913, when the custom of addressing Congress in person was resumed by President Wilson and, with the exception of President Hoover (VIII, 3333) has been followed generally by subsequent Presidents. Only messages of major importance are delivered in person. A message in writing is usually communicated to both Houses on the same day, but an original document accompanying can of course be sent to but one House (V, 6616, 6617). The President's State of the Union message delivered in person to the 95th Congress, second Session, together with separate hand-delivered written messages, were referred on motion to the Union Calendar and ordered printed (Jan. 19, 1978, p. 152). In early years confidential messages were often sent and considered in secret session of the House (V, 7251, 7252).

§ 169. Messages required by law.

By law (31 U.S.C. 1105), the President is required to transmit the Budget to Congress on or after the first Monday in January but not later than the first Monday in February each year. In addition, he is required to submit a supplemental budget summary by July 16 each year (31 U.S.C. 1106). Submission of the Economic Report of the President is required within 10 days after the submission of the budget (15 U.S.C. 1022). The Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 601) requires the transmittal to Congress by the President of amendments and revisions related to the budget on or before April 10 and July 15 of each year. In addition, the Act provides for the transmittal of messages proposing rescissions and deferrals of budget authority (2 U.S.C. 682).

When the President has indicated that he will address Congress in person a concurrent resolution is adopted by both Houses arranging for a joint session to receive the message. At the appointed hour the Members of the Senate arrive. The Speaker presides and the President of the Senate (the Vice President) sits to the right of the Speaker, but in the absence of the Vice President, the President pro tempore sits to the left of the Speaker (Nov. 27, 1963, p. 22838).

§ 170. Reception of messages from the President.

The ceremony of receiving a message in writing is simple (V, 6591), and may occur during consideration of a question of privilege (V, 6640–6642) or before the organization of the House (V, 6647–6649) and in the absence of a quorum (V, 6650; VIII, 3339; clause 7 of rule XX).

But, with the exception of vetoes, messages are regularly laid before the House only at the time prescribed by the rule for the order of business (V, 6635–6638) within the discretion of the Speaker (VIII, 3341). While a message of the President is always read in full the latest rulings have not permitted the reading of the accompanying documents to be demanded as a matter of right (V, 5267–5271; VII, 1108). A concurrent resolution providing for a joint session to receive the President's message was held to be of the highest privilege (VIII, 3335).

* * * he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; * * *

§171. Power of President as to convening and adjourning Congress.

In certain exigencies the President may convene Congress at a place other than the seat of government (I, 2; 2 U.S.C. 27). Congress has on occasion been convened by the President (I, 10, 11; Nov. 17, 1947, p. 10578; July 26, 1948, p. 9362), and in one instance, when Congress had provided by law for meeting, the President called it together on an earlier day (I, 12). The Congress having adjourned on July 27, 1947, p. 10521, and on June 20, 1948, p. 9350, to a day certain, the President called it together on an earlier date than that to which it adjourned (Nov. 17, 1947, p. 10577; July 26, 1948, p. 9362). There has been some discussion as to whether or not there is a distinction between a session called by the President and other sessions of Congress (I, 12, footnote).

* * * he shall receive Ambassadors and other public Ministers; he shall take Care That the Laws be faithfully executed, and shall Commission all the officers of the United States.

§172. President receives ambassadors, executes the laws, and commissions officers.

SECTION 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

§173. Impeachment of civil officers.

§174. As to the officers who may be impeached.

In the Blount trial the managers contended that all citizens of the United States were liable to impeachment, but this contention was not admitted (III, 2315), and in the Belknap trial both managers and counsel for respondent agreed that a private citizen, apart from offense in an office, might not be impeached (III, 2007). But resignation of the office, does not prevent impeachment for crime or misdemeanor therein (III, 2007, 2317, 2444, 2445, 2459, 2509). In Blount's case it was decided that a Senator was not a civil officer within the meaning of the impeachment provisions of the Constitution (III, 2310, 2316). Questions have also arisen as to whether or not the Congressional Printer (III, 1785), or a vice consul-general (III, 2515), might be impeached. Proceedings for the impeachment of territorial judges have been taken in several instances (III, 2486, 2487, 2488), although various opinions have been given that such an officer is not impeachable (III, 2022, 2486, 2493). A committee of the House by majority vote held a Commissioner of the District of Columbia not to be a civil officer subject to impeachment under the Constitution (VI, 548). An independent counsel appointed under 28 U.S.C. 593 (a statute currently ineffective under 28 U.S.C. 599) may be impeached under 28 U.S.C. 596(a), and a resolution impeaching such an independent counsel constitutes a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21560).

§ 175. Nature of impeachable offenses.

As to what are impeachable offenses there has been much discussion (III, 2008, 2019, 2020, 2356, 2362, 2379–2381, 2405, 2406, 2410, 2498, 2510; VI, 455; Impeachment of Richard M. Nixon, President of the United States, Committee on the Judiciary, H. Rept. 93–1305, Aug. 20, 1974, p. 29219; Associate Justice William O. Douglas, Final Report by the Special Subcommittee on H. Res. 920, Committee on the Judiciary, Sept. 17, 1970; Impeachment of William Jefferson Clinton, President of the United States, H. Rept. 105–830, Dec. 16, 1998). For a time the theory that indictable offenses only were impeachable was stoutly maintained and as stoutly denied (III, 2356, 2360–2362, 2379–2381, 2405, 2406, 2410, 2416); but on the 10th and 11th articles of the impeachment of President Andrew Johnson the House concluded to impeach for other than indictable offenses (III, 2418), and in the Swayne trial the theory was definitely abandoned (III, 2019). While there has not been definite concurrence in the claim of the managers in the trial of the President that an impeachable offense is any misbehavior that shows disqualification to hold and exercise the office, whether moral, intellectual, or physical (III, 2015), yet the House has impeached judges for improper personal habits (III, 2328, 2505), and in the impeachment of the President one of the articles charged him with "intemperate, inflammatory, and scandalous harangues" in public addresses, tending to the harm of the Government (III, 2420). There was no conviction under these charges except in the single case of Judge Pickering, who was charged with intoxication on the bench (III, 2328–2341). As to the impeachment of judges for other delinquencies, there has been much contention as to whether they may be impeached for any breach of good behavior (III, 2011, 2016, 2497), or only for judicial misconduct occurring in the actual administration of justice in connection with the court (III, 2010, 2013, 2017). The intent of the judge (III, 2014, 2382) as related to mistakes of the law, and the relations of intent to conviction have been discussed at length (III, 2014, 2381, 2382, 2518, 2519). The statutes make nonresidence of a judge an impeachable offense, and the House has taken steps to impeach for this cause (III, 2476, 2512). There has, however, been some question as to the power of Congress to make an impeachable offense (III, 2014, 2015, 2021, 2512). Usurpation of power has been examined several times as a cause for impeachment (III, 2404, 2508, 2509, 2516, 2517). There also has been discussion as to whether or not there is distinction between a misdemeanor and a high misdemeanor (III, 2270, 2367, 2492). Review of impeachments in Congress showing the nature of charges upon which impeachments have been brought and judgments of the Senate thereon (VI, 466). The report accompanying a resolution to impeach President Clinton, and the debate in the House thereon, included discussion of the nature of an impeachable offense (H. Rept. 105–830; Dec. 18, 1998, p. 27828). Of the four articles of impeachment of President Clinton reported by the Committee on the Judiciary ((1) perjury in grand jury, (2) perjury in a civil deposition, (3) obstruction of justice, and (4) improper responses to written questions from the Committee on the Judiciary), only the first and third were adopted by the House (H. Res. 611, Dec. 19, 1998, p. 28110). The President was acquitted by the Senate on each article (Feb. 12, 1999, p. 2376).

§ 176. Later impeachment inquiries.

The articles of impeachment adopted by the House in 1936 against Judge Ritter charged a variety of judicial misconduct, including violations of criminal law. The seventh and general article, upon which Judge Ritter was convicted by the Senate, charged general misconduct to bring his court into scandal and disrepute and to destroy public confidence in his court and in the judicial system (Impeachment by the House, Mar. 2, 1936, p. 3091; Conviction by the Senate, Apr. 17, 1936, p. 5606). Following his conviction by the Senate, former Judge Ritter brought an action for back salary, contending that the Senate had tried and convicted him for non-impeachable offenses. The U.S. Court of Claims held that the Senate's power to try impeachments was exclusive and not subject to judicial review. Ritter *v.* United States, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937).

In 1970 a special subcommittee of the Committee on the Judiciary considered charges of impeachment against Associate Justice Douglas of the Supreme Court. The subcommittee recommended against his impeachment but concluded that a Federal judge could be impeached (1) for judicial conduct that is a serious dereliction from public duty and (2) for nonjudicial conduct that is criminal in nature (Associate Justice William O. Douglas, Final Report by the Special Subcommittee on H. Res. 920, Committee on the Judiciary, September 17, 1970).

In 1974 the Committee on the Judiciary investigated charges of impeachment against President Nixon (H. Res. 803, Feb. 6, 1974, p. 2349), and determined to recommend his impeachment to the House. The President having resigned, the committee reported to the House without submitting a resolution of impeachment, and the House accepted the report by resolution (H. Res. 1333, Aug. 20, 1974, p. 29361). The report of the committee included the text of the three articles of impeachment adopted by the committee. The committee had concluded that impeachable offenses need not be indictable offenses and recommended impeachment of the President

(1) for violating his oath of office and his duty under the Constitution by preventing, obstructing, and impeding the administration of justice; (2) for engaging in a course of conduct violating the constitutional rights of citizens, impairing the administration of justice, and contravening the laws governing executive agencies; and (3) for failing to honor subpoenas issued by the Committee on the Judiciary in the course of its impeachment inquiry (Impeachment of Richard M. Nixon, President of the United States, Committee on the Judiciary, H. Rept. 93–1305, Aug. 20, 1974, printed in full in the Cong. Record, Aug. 22, 1974, p. 29219).

In 1986, for the first time since 1936, the House agreed to a resolution impeaching a Federal district judge. Judge Harry Claiborne had been convicted of falsifying Federal income tax returns. His final appeal was denied by the Supreme Court in April, and he began serving his prison sentence in May. Because he declined to resign, however, Judge Claiborne was still receiving his judicial salary and, absent impeachment, would resume the bench on his release from prison. Consequently, a resolution of impeachment was introduced on June 3, and on July 16, the Committee on the Judiciary reported to the House four articles of impeachment against Judge Claiborne. On July 22, the resolution was called up as a question of privilege and agreed to by a recorded vote of 406 yeas, 0 nays. After trial in the Senate, Judge Claiborne was convicted on three of the four articles of impeachment and removed from office on October 9, 1986.

In 1988, the House agreed to a resolution reported from the Committee on the Judiciary and called up as a question of the privileges of the House impeaching Federal district judge Alcee L. Hastings for high crimes and misdemeanors specified in 17 articles of impeachment, some of them addressing allegations on which the judge had been acquitted in a Federal criminal trial (H. Res. 499, 100th Cong., Aug. 3, 1988, p. 20206). No trial in the Senate was had before the adjournment of the 100th Congress. In the 101st Congress, the House reappointed managers to conduct this impeachment in the Senate (Jan. 3, 1989, p. 84); the Senate began its deliberations on March 15, 1989 (p. 4219); conviction and removal from office occurred on October 20, 1989 (p. 25335). Also in the 101st Congress, the Senate convicted Federal district judge Walter L. Nixon on two of the three impeachment charges brought against him (Nov. 3, 1989, p. 27101). For further discussion of the continuance of impeachment proceedings in a succeeding Congress, see § 620, *infra*.

In 1998 the House agreed to a privileged resolution reported from the Committee on Rules, referring to the Committee on the Judiciary a communication from an independent counsel transmitting under 28 U.S.C. 595(c) evidence of possible impeachable offenses by President Clinton, and restricting access to the communication and to meetings and hearings thereon (H. Res. 525, Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported from the Committee on the Judiciary authorizing an impeachment inquiry by that committee and investing it with special investigative authorities to facilitate the inquiry (H. Res. 581, Oct.

8, 1998, p. 24679). The Committee on the Judiciary filed with the House a privileged report accompanying a resolution containing four articles of impeachment against President Clinton that alleged: (1) the President gave perjurious, false, and misleading testimony to a grand jury; (2) the President gave perjurious, false, and misleading testimony in a Federal civil action; (3) the President prevented, obstructed, and impeded the administration of justice relating to a Federal civil action; and (4) the President abused his office, impaired the administration of justice, and contravened the authority of the legislative branch by his response to 81 written questions submitted by the Committee on the Judiciary (H. Res. 611, Dec. 17, 1998, p. 27819). The chairman of the Committee on the Judiciary called up the resolution on December 18, 1998 (p. 27828).

A resolution offered from the floor to permit the Delegate of the District of Columbia to vote on the articles of impeachment was held not to constitute a question of the privileges of the House under rule IX (Dec. 18, 1998, p. 27825). To a privileged resolution of impeachment, an amendment proposing instead censure, which is not privileged, was held not germane (Dec. 19, 1998, p. 28100).

For further discussion of impeachment proceedings, see §§ 601–620, *infra*; § 31, *supra*, and Deschler, ch. 14.

ARTICLE III.

§ 177. The judges, their terms, and compensation.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

§ 178. Extent of the judicial power.

SECTION 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public

Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

§ 178a. Decisions of the Court on legislative standing.

Decisions of the Supreme Court involving legislative standing to bring cases in Federal court include Coleman *v.* Miller, 307 U.S. 433 (1939); Goldwater *v.* Carter, 444 U.S. 996 (1979); Allen *v.* Wright, 468 U.S. 737 (1984); Whitmore *v.* Arkansas, 495 U.S. 149 (1990); and, most recently, Raines *v.* Byrd, 521 U.S. 811 (1997), holding that Member plaintiffs must have alleged a "personal stake" in having an actual injury redressed, rather than an "institutional injury" that is "abstract and widely dispersed."

§ 179. Original and appellate jurisdiction of the Supreme Court.

2 In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

§ 180. Places of trial of crimes by jury.

3 The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

§ 181. Treason against the United States.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person Attainted.

§ 182. Punishment for treason.

ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 183. Each State to give credit to acts, records, etc., of other States.

SECTION 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

§ 184. Privileges and immunities of citizens.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

§ 185. Extradition for treason, felony, or other crime.

§ 186. Persons held to service or labor.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

§ 187. Admission and formation of new States.

SECTION 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

§ 188. Power of Congress over territory and other national property.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The Court of Appeals for the District of Columbia Circuit has held that the property clause does not prohibit the transfer of United States property to foreign nations through self-executing treaties. Edwards *v.* Carter, 580 F.2d 1055 (1978), cert. denied, 436 U.S. 907 (1978).

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

§ 189. Republican form of government and protection from domestic violence guaranteed to the States.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

§ 190. Amendments to the Constitution.

Amendments to the Constitution are proposed in the form of joint resolutions, which have their several readings and are enrolled and signed by the presiding officers of the two Houses (V, 7029, footnote), but are not presented to the President for his approval (V, 7040; see discussion

§ 191. Form of and action on amendments to the Constitution.

under § 115, *supra*; Hollingsworth *v.* Virginia, 3 U.S. (3 Dall.) 378 (1798)). They are filed with the Archivist who, under the law (1 U.S.C. 106b; 1 U.S.C. 112), has the responsibility for the certification and publication of such amendments, once they are ratified by the States. Under the earlier procedure, the two Houses sometimes requested the President to transmit to the States certain proposed amendments (V, 7041, 7043), but a concurrent resolution to that end was without privilege (VIII, 3508). The President notified Congress by message of the promulgation of the ratification of a constitutional amendment (V, 7044).

§ 192. The two-thirds vote on proposed amendments.

The vote required on a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership (V, 7027, 7028; VIII, 3503). The majority required to pass a constitutional amendment, like the majority required to pass a bill over the President's veto (VII, 1111) and the majority required to adopt a motion to suspend the rules (Dec. 16, 1981, pp. 31850, 31851, 31855, 31856), is two-thirds of those Members voting either in the affirmative or negative, a quorum being present, and Members who only indicate that they are "present" are not counted in this computation (Nov. 15, 1983, p. 32685). The requirement of the two-thirds vote applies to the vote on the final passage and not to amendments (V, 7031, 7032; VIII, 3504), or prior stages (V, 7029, 7030), but is required where the House votes on agreeing to Senate amendments (V, 7033, 7034; VIII, 3505), or on agreeing to a conference report (V, 7036). One House having, by a two-thirds vote, passed in amended form a proposed constitutional amendment from the other House, and then having by a majority vote receded from its amendment, the constitutional amendment was held not to be passed (V, 7035).

In the 95th Congress, both the House and Senate agreed by a majority vote to House Joint Resolution 638, extending the time period for ratification by the States of the Equal Rights Amendment, where House Joint Resolution 208 of the 92d Congress, proposing the amendment, had provided for a seven-year ratification period. The House determined, by laying on the table by a record vote a privileged resolution asserting that a vote of two-thirds of the Members present and voting was required to pass a joint resolution extending the ratification period for a constitutional amendment already submitted to the States, that only a majority vote was required on such a measure (H.J. Res. 638; Speaker O'Neill, Aug. 15, 1978, p. 26203).

The joint resolution extending the ratification period for the Equal Rights Amendment was delivered to the President, who signed it although expressing doubt as to the necessity for his doing so (Presidential Documents, Oct. 19, 1978). When sent to the Archivist, the joint resolution was not assigned a public law number, but the Archivist notified the States of the action of the Congress in extending the ratification period. For a judicial decision voiding this extension, see Idaho *v.* Freeman, 529 F.Supp. 1107

(D.C.D. Idaho, 1981), judgment stayed *sub nom.* National Organization of Women *v.* Idaho, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982).

The yeas and nays are not required to pass a joint resolution proposing to amend the Constitution (V, 7038–7039; VIII, 3506).

Question has arisen as to the power of a State to recall, or rescind, its assent to a constitutional amendment (V, 7042; footnotes to §§ 225, 234, *infra*) but has not been the subject of a final judicial determination (see Idaho *v.* Freeman, 529 F.Supp. 1107 (D.C.D. Idaho, 1981), judgment stayed *sub nom.* National Organization of Women *v.* Idaho, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982)).

§ 193. Decisions of the Court.

Decisions of the Supreme Court of the United States: National Prohibition Cases, 253 U.S. 350 (1920); Hawke *v.* Smith, 253 U.S. 221 (1920); Dillon *v.* Gloss, 256 U.S. 368 (1921); Leser *v.* Garnett, 258 U.S. 130 (1922); Coleman *v.* Miller, 307 U.S. 433 (1939); Chandler *v.* Wise, 307 U.S. 474 (1939).

ARTICLE VI.

§ 194. Validity of debts and engagements.

1 All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

§ 195. Constitution, laws, and treaties the supreme law of the land.

2 This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

§ 196. Oaths of public officers; and prohibition of religious tests.

3 The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States,

shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

§ 197. Form of oath.

The form of the oath is prescribed by statute (5 U.S.C. 3331; I, 128): "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

§ 198. Administration of oath at organization.

The Act of June 1, 1789 (2 U.S.C. 25), provides that on the organization of the House and previous to entering on any other business the oath shall be administered by any Member (generally the Member with longest continuous service) (I, 131; VI, 6) to the Speaker and by the Speaker to the other Members and Clerk (I, 130). The Act has at times been considered in the House as directory merely (I, 118, 242, 243, 245; VI, 6); but at other times has been observed carefully (I, 118, 140). The Act was cited by the Clerk in recognizing for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115).

Previously it was the custom to administer the oath by State delegations, but beginning with the 71st Congress Members-elect have been sworn in en masse (VI, 8). The Clerk supplies printed copies of the oath to Members and Delegates who have taken the oath in accordance with law, which shall be subscribed by the Members and Delegates and delivered to the Clerk to be recorded in the Journal and Congressional Record as conclusive proof of the fact that the signer duly took the oath in accordance with law (2 U.S.C. 25). See Deschler, ch. 2. The Speaker has requested that guests in the gallery rise with the Members during the administration of the oath of office to a Member-elect (Nov. 12, 1991, p. 31255).

§ 199. Functions of the Speaker in administering the oath.

The Speaker possesses no arbitrary power in the administration of the oath (I, 134), and when objection is made the question must be decided by the House and not by the Chair (I, 519, 520). An objection prevents the Speaker from administering the oath of his own authority, even though the credentials be regular in form (I, 135–138). The Speaker has frequently declined to administer the oath in cases wherein the House has, by its action, indicated that he should not do so (I, 139, 140). And in case of doubt he has waited the instruction of the House

(I, 396; VI, 11). There has been discussion as to the competency of a Speaker pro tempore to administer the oath (I, 170), and in the absence of the Speaker a Member-elect waited until the Speaker should be present (I, 179), but in 1920 a Speaker pro tempore whose designation by the Speaker had been approved by the House, administered the oath to a Member (VI, 20). The House may authorize the Speaker to administer the oath to a Member away from the House (I, 169), or may, in such a case, authorize another than the Speaker to administer the oath (I, 170; VI, 14). For forms used in this procedure see (VI, 14).

§ 200. Administration of the oath as related to the quorum.

Members-elect have been sworn at the beginning of a second session before the ascertainment of a quorum (I, 176–178), but when the Clerk called the second session of the 87th Congress to order, Members-elect were not sworn before ascertainment of a quorum and election of Speaker McCormack to succeed Speaker Rayburn, who had died during the sine die adjournment (Jan. 10, 1962, p. 5). Members-elect have also been sworn where a roll call or other ascertainment has shown the absence of a quorum (I, 178, 181, 182; VI, 21) but in one instance, however, the Speaker declined to administer the oath under such circumstances (II, 875).

§ 201. Privilege of administration of the oath.

A proposition to administer the oath to a Member is a matter of high privilege (VI, 14). It has been administered during a call of the roll and during an electronic vote on a motion to agree to rules at the time of organization (I, 173; VI, 22; Jan. 5, 2005, p. ——) and during an electronic vote taken during House deliberations interlocutory to an ongoing joint session to count the electoral votes (Jan. 6, 2005, p. ——). It also has been administered before the reading of the Journal (I, 172), in the absence of a quorum (VI, 22), on Calendar Wednesday (VI, 22), before a pending motion to amend the Journal (I, 171), and after the previous question has been ordered on a bill reported back to the House from the Committee of the Whole (Oct. 3, 1969, p. 28487). A division being demanded on a resolution for seating several claimants, the oath may be administered to each as soon as his case is decided (I, 623). Where a Member-elect whose right to a seat has been determined by the House presents himself to take the oath, his right to be sworn is complete and cannot be deferred even by a motion to adjourn (I, 622), but the Speaker has entertained the motion to adjourn after adoption of a seating resolution but before the Member-elect was present in the Chamber to take the oath (May 1, 1985, p. 10019).

§ 202. Challenge of the right to take the oath.

The right of a Member-elect to take the oath is sometimes challenged and the Speaker requests the Member-elect to stand aside temporarily (VI, 9–11, 174; VIII, 3386). This usually occurs at the time of organization of the House. The challenge proceeds from some Member, but the fact that he has not yet taken the oath himself does not debar him from making the challenge (I, 141). The Member challenging does so on his responsibility as a Member or on the strength of documents (I, 448) or on both (I, 443, 474). And where an objection was sustained neither by affidavit nor on the responsibility of the Member objecting, the House declined to entertain it (I, 455).

§ 203. Consideration of an objection to the taking of the oath.

It has been held, although not uniformly, that in cases where the right of a Member-elect to take the oath is challenged, the Speaker may direct the Member to stand aside temporarily (I, 143–146, 474; VI, 9, 174; VIII, 3386). The Member so challenged is not thereby deprived of any right (I, 155). Similarly, the seating of a Member-elect does not prejudice a pending contest, brought under the Federal Contested Elections Act (2 U.S.C. 381–396), over final right to the seat (Jan. 7, 1997, p. 120; Jan. 4, 2007, p. ——). When several are challenged and stand aside the question is first taken on the Member-elect first required to stand aside (I, 147, 148). In 1861 it was held that the House might direct contested names to be passed over until the other Members-elect had been sworn in (I, 154). Motions and debate are in order on the questions involved in a challenge, and in a few cases other business has intervened by unanimous consent (I, 149, 150). By unanimous consent the consideration of a challenge is sometimes deferred until after the completion of the organization (I, 474), and by unanimous consent also the House has sometimes proceeded to legislative business pending consideration of the right of a Member to be sworn (I, 151–152).

§ 204. Relation of credentials to the right to take the oath.

Although the House has emphasized the impropriety of swearing a Member without credentials (I, 162–168), yet it has been done in cases wherein the credentials are delayed or lost and there is no doubt of the election (I, 85, 176–178; VI, 12, 13), or where the governor of a State has declined to give credentials to a person whose election was undoubted and uncontested (I, 553). A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that a State Supreme Court had issued a writ restraining the Secretary of State from issuing such certificate (Jan. 3, 1949, p. 8). Where the prima facie right is contested the Speaker declines to administer the oath (I, 550), but the House admits on his prima facie showing and without regard to final right a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned (I, 528–534). If the status of the constituency is in doubt, the House usually defers the oath (I, 361, 386, 448, 461). In the 99th Congress, the House declined to give prima facie effect to a certificate of election, the results of the election being in doubt, and referred the issue of initial as well as final right to the Committee on House Administration (H. Res. 1, Jan. 3, 1985, pp. 380–87). After a recount of the votes was conducted by that committee, the House on its recommendation declared the candidate without the certificate entitled to the seat (H. Res. 146, May 1, 1985, p. 9998). The House also may defer the oath when a question of qualifications arises (I, 474), but it may investigate qualifications after the oath is taken (I, 156–159, 420, 462, 481), and after investigation unseat the Member by majority vote (I, 428).

§ 205. Sanity, loyalty, and incapacity as related to the oath.

Questions of sanity (I, 441) and loyalty (I, 448) seem to pertain to competency to take the oath as a question of qualifications, although there has been not a little debate on this subject (I, 479). In one case a Member-elect who had not taken the oath was excluded from the House because of disloyalty, where the resolution of exclusion and the committee report thereon concluded that he was ineligible to take a seat as a Representative under the express provisions of section 3 of the 14th amendment (VI, 56–59). This action by the House was cited in the Supreme Court decision of Powell *v.* McCormack (395 U.S. 486, 545 fn. 83) which denied the power of the House to exclude Members-elect by a majority vote for other than failure to meet the express qualifications stated in the Constitution. In Bond *v.* Floyd, 385 U.S. 116 (1966), the Supreme Court held that the exclusion by a State legislature of a member-elect of that body was unconstitutional, where the legislature had asserted the power to judge the sincerity with which the Member-elect could take the oath to support the Constitution of the United States. In the 97th Congress, the House declared vacant by majority vote the seat of a Member-elect unable to take the oath because of illness, where the medical prognosis showed no likelihood of improvement to permit the Member-elect to take the oath or assume the duties of a Representative (H. Res. 80, Feb. 24, 1981, pp. 2916–18).

§ 206. Decisions of the Court.

Decisions of the Supreme Court of the United States: McCulloch *v.* Maryland, 17 U.S. (4 Wheat.) 316 (1819); Ex parte Garland, 71 U.S. (4 Wall.) 333 (1867); Davis *v.* Beason, 133 U.S. 333 (1890); Mormon Church *v.* United States, 136 U.S. 1 (1890).

ARTICLE VII.

§ 207. Ratification of the Constitution.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of

America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

G° WASHINGTON—*Presi^dt^.*
and Deputy from Virginia.

[Signed also by the deputies of twelve States.]

New Hampshire.

JOHN LANGDON, NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM, RUFUS KING.

Connecticut.

WM. SAML. JOHNSON, ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA: DAYTON.

Pennsylvania.

B FRANKLIN,
ROBT. MORRIS,
THOS. FITZSIMONS,
JAMES WILSON,
THOMAS MIFFLIN,
GEO. CLYMER,
JARED INGERSOLL,
GOUV MORRIS.

Delaware.

GEO. READ,
JOHN DICKINSON,
JACO BROOM,
GUNNING BEDFORD JUN,
RICHARD BASSETT.

Maryland.

JAMES MCHENRY,
DANL CARROLL,
DAN OF ST THOS. JENIFER.

Virginia.

JOHN BLAIR, JAMES MADISON Jr.

North Carolina.

WM. BLOUNT,
HU WILLIAMSON,
RICH'D. DOBBS SPAIGHT.

South Carolina.

J. RUTLEDGE,
CHARLES PINCKNEY,
CHARLES COTESWORTH PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,
ABR BALDWIN.

Attest:
WILLIAM JACKSON, *Secretary.*