ARTICLE I.

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.

§3. Legislative powers vested in Congress.

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*.

§4. Power to investigate.

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

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

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's Precedents, vol. 2, 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. And 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 12 m. when no other hour is fixed (I. 4, 210). In the later practice a

resolution fixing the daily hour of meeting at 12 o'clock meridian or some other hour is agreed to at the beginning of each session.

Prior to adoption of the 20th amendment, the legislative day of March 3 extended to 12 m. 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 (non-election) year, the Congress has agreed to adjourn for the month preceding Labor Day. For more on this provision, see §947, *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 prior to 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 Colum-

bia 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's Precedents, vol. 2, ch. 7, secs. 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 seasonable 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.

§ 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.

§ 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 dying, 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, where two Members-elect had been passengers on a missing aircraft and were presumed dead, the Speaker lay 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, pp. 15–16). 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) but Members have resigned by letter to the House alone, it being presumed that the Member would also notify his Governor (VI, 226), and 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). But sometimes the House learns of a Member's resignation only 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). In one case a Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213), but the House permitted it later in another case (VI, 229). 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 and 13774; Jan. 6, 1983 and Feb. 22, 1983, pp. 114 and 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 res-

ignation 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-in as Vice President (Dec. 6, 1973, p. 39927). A sitting Member having been confirmed as Secretary of Defense, his letter of resignation was laid before the House prior to 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).

§ 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 which 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, pp. 15–16; 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 the 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, pp. 15–16).

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

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, p. ——).

§ 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, Doorkeeper (abolished by the 104th Congress, see § 651d, *infra*), Postmaster (abolished during the 102d Congress, see § 654a, *infra*), 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 continuing through the entire Congress succeeding that in which they were elected (I, 244, 263). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244); and in later years the statutes have imposed on the Clerk, Sergeant-at-Arms, and former Doorkeeper duties which 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 by viva voce vote 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. ——). 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. ——). 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.

The Speaker having died during the recess 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 (I, 234; Jan. 10, 1962, p. 5). Speaker Joseph W. Byrns having 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 his successor, Hon. William B. Bankhead, was elected by resolution (June 4, 1936, p. 9016). Speaker Bankhead also died during a session, on a day when the House was not meeting. The Clerk on the following day called the House to order and Hon. Sam Rayburn was elected by resolution (Sept. 16, 1940, p. 12231). Form of resolution offered on death of a Speaker (Sept. 16, 1940, p. 12232; Jan. 10, 1962, p. 9) and a former Speaker (VIII, 3564; Mar. 7, 1968, p. 5742). A resolution declaring vacant the office of Speaker is presented as a matter of high constitutional privilege (VI, 35). A proposition to elect a Speaker is in order at any time and presents a question of the highest privilege (VIII, 3383). 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), or by sending a letter which the Clerk reads to the House at the beginning of a new session (I, 232). In the 101st Congress, Speaker Wright took the floor on a question of personal privilege, to respond to charges made against him, and announced his intention to resign as Speaker "on the election of my successor" (May 31, 1989, p. 10440). On June 6, 1989, Speaker Wright entertained nominations for

Speaker and, following the roll call, declared Representative Foley "duly elected Speaker" (p. 10801). When the Speaker resigns no action of the House excusing him from service is taken (I, 232). In one instance a Speaker resigned on the last day of the Congress, and the House elected a successor for the day (I, 225). 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).

§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 § 635, *infra;* and, for further information on the elections of officers, see Deschler's Precedents, vol. 1, ch. 6.

§30. Election of Clerk in relation to business.

The office of Clerk becoming vacant, it was held that the House would not be organized for business until a Clerk should be elected (I, 237); but in another instance some business intervened before a Clerk was elected (I, 239). At the time of organization, while the Clerk of the preceding House was yet officiating, and after the Speaker had been elected, the House proceeded to legislation and other business before electing a Clerk (I, 242, 244). But in one case it was held that the law of 1789 (see 2 U.S.C. 25) bound the House to elect the Clerk before proceeding to business (I, 241).

§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's Precedents, vol. 3, 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).

SECTION 3. [1][The Senate of the United States shall be composed of two Senators from each State, chosen by the Leg-

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

islature thereof, for six Years; and each Senator shall have one Vote.]

This provision has now been changed by the 17th amendment to the Constitution.

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.

§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, 113 S. Ct. 732 (1993).

In 1868, after mature consideration, the Senate overruled the old view of its functions (III, 2057), and decided that it sat for impeachment trials as the Senate and not as a court (III, 2057), and eliminated from its rules all mention of itself as a "high court of impeachment" (III, 2079, 2082).

§39. The presiding officer.

An anxiety lest the Chief Justice might have a vote in the approaching trial of the President seems to have prompted this action (III, 2057). There was examination of the question of the Chief Justice's power to vote (III, 2098); but the Senate declined to declare his incapacity to vote, and he did in fact give a casting vote on incidental questions (III, 2067). The Senate declined to require that the Chief Justice be sworn when about to preside (III, 2080); but the Chief Justice had the oath administered by an associate justice (III, 2422).

In impeachments for officers other than the President of the United States the presiding officer of the Senate presides, whether he be Vice President, the regular President pro tempore (III, 2309, footnote, 2337, 2394) or a special President pro tempore chosen to preside at the trial only (III, 2089, 2477).

§40. Oath and quorum.

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators (III, 2375). The quorum of the Senate sitting for an impeachment trial is a quorum of the Senate itself, and not merely a quorum of the Senators sworn for the trial (III, 2063). The vote required for conviction is two-thirds of those Senators present and voting (Oct. 20, 1989, p. 25335). In 1868, when certain States were without representation, the Senate declined to question its competency to try an impeachment case (III, 2060). See S. Doc. 93–102, "Procedure and Guidelines for Impeachment Trials in the United States Senate," for precedents relating to the conduct of Senate impeachments.

§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 pro-

nounced (III, 2397). The question on removal and disqualification has been held divisible for the vote (III, 2397; VI, 512).

The question of judgment requires only a majority vote (VI, 512; Apr. 17, 1936, p. 5606).

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).

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.

§ 42. Times, places, and manner of elections of Representatives and 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.* Classic, 313 U.S. 299 (1941); United States *v.* Wurzbach, 280 U.S. 396 (1930). 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).

§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); Buckley *v.* Valeo, 424 U.S. 1 (1976); and U.S. Term Limits, Inc., *v.* Thorton, 63 U.S.L.W. 4413 (1995). 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 of the Constitution has been superseded by the 20th amendment.

In the later but not the earlier practice (I, 5), prior to 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*).

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

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

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's Precedents, vol. 2, ch. 8 (elections) and ch. 9 (election contests); for discussion of the power of the House to judge qualifications, see Deschler's Precedents, vol. 2, 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's Precedents, vol. 2, ch. 8, sec. 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 et seq.); 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).

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

For many years the quorum was determined only by noting the numbers 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). But in 1890 Mr. 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, afterwards sustained by the Supreme Court (IV, 2904; United States *v.* Ballin, 144 U.S. (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). And 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 did not concede 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 were 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).

§ 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 have 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 6 was added to rule XV to provide that after the presence of a quorum is once ascertained on any day, a point of no quorum may not be entertained after the Committee has risen and pending the report of the Chairman to the House (see § 774c, *infra*). Clause 6 now specifically precludes a point of no quorum during the reception of any message from the President or the Senate, before or during the prayer, during the administration of oaths, during motions incidental to a call of the House, and (once a quorum has been established on that day) during special orders when no legislative business is pending. In the 95th Congress, the same clause of rule XV was further amended to provide that it is not in order to make or entertain a point of order that a quorum is not present unless the Speaker has put the pending motion or proposition to a vote, but the Speaker retains the right to recognize a Member to move a call of the House at any time. A point of order of no quorum during debate only in the House does not lie independently under this clause of the Constitution since clause 6(e) of rule XV is a proper exercise of the House's constitutional rulemaking authority which 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, pp. 28800–01).

Before these recent changes to 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 2 of rule XXIII. 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 6 of rule XV).

§ 57. Decisions of the Court.

Decisions of the Supreme Court of the United States: United States *v.* Ballin, 144 U.S. 1 (1892); Kilbourn *v.* Thompson, 103 U.S. 190 (1881); 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 which 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 which were intended to remain applicable under the Budget Act (H. Res. 5, 98th Cong., Jan. 3, 1983, p. 34). The 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 a law of 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 §651d, *infra*), Postmaster (abolished during the 102d Congress; see §654a, *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 law of 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 the Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of that law (V, 6758–6760; VIII, 3384; Jan. 3, 1953, p. 24; Jan. 10, 1967, pp. 14–15). 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, 5604). Prior to the adoption of rules, the statutory enactments incorporated into the rules of the prior Congress as an exercise of the rule-making 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. ——). 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's Precedents, vol. 1, ch. 1, sec. 8; Jan. 5, 1993, p. ——), even prior to 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. ——). The Speaker may also recognize a Member to offer for immediate consideration a special order providing for the consideration of a resolution adopting the rules (V, 5450; Jan. 4, 1995, p. ——). The resolution adopting rules for the 104th Congress included a special order of business for consideration of a bill to make certain laws applicable to the legislative branch (sec. 108, H. Res. 6, Jan. 4, 1995, 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 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. ——). It is the prerogative of the minority to offer a motion to commit even prior to 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. ——). 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. ——). The motion to refer has also been permitted upon the offering of a resolution adopting the rules, and prior to debate thereon, subject to the motion to lay on the table (Jan. 5, 1993, p. ——).

§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 continue 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 by reprimand or censure.

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 20(e), House Comm. on Standards of Official Conduct, 104th Cong.). In action for censure the House has discussed whether or not the principles of the procedure of the courts should be followed (II, 1255). 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, and Members, against whom resolutions have been pending have participated in debate either by consent (II, 1656) or without question as to consent (II, 1246, 1253). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). But 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). A resolution of censure should not apply to more than one Member (II, 1240, 1621). 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 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 XLIV, the Code of Official Conduct, 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 96th Congress two Members were censured by the House: (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 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) censuring two Members for improper relationships with House pages in prior Congresses (July 20, 1983, p. 20020 and p. 20030). 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. ——).

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).

§64. Punishment by expulsion.

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, 1286), and 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). Both Houses have distrusted their power to punish in such cases (II, 1264, 1284, 1285, 1288, 1289; VI, 56, 238). However, 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).

§65. Procedure for expulsion.

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). Members threatened with expulsion have been heard on their own behalf by consent (II, 1273, 1275), or as a matter of right (II, 1269, 1286). In general, there has been discussion as to whether or not the principles of the procedure of the courts should be followed (II, 1264). The Senate once expelled several Senators by a single resolution (II, 1266). Members and Senators have been expelled for treason (II, 1261), for high misdemeanor inconsistent with public duty (II, 1263), for friendship or association with enemies of the Government and absence from their seats (II, 1269, 1270), and for bearing arms against the Government (II, 1267). In the 96th Congress, the House expelled a Member who had been convicted of bribery (a felony) for accepting funds to perform official duties as a Member of Congress (H. Res. 794, Oct. 2, 1980, pp. 28953–78).

§66. Propositions for punishment entertained as of privilege.

A proposition to reprimand, censure, or expel a Member presents a question of privilege (II, 1254; III, 2648–2651; VI, 236; July 26, 1990, p. 19717); and, if reported by the Committee on Standards of Official Conduct (or a derivation thereof), may be called up at any time after the Committee has filed its report (Jan. 21, 1997, p. ——). An expulsion resolution when offered may be laid on the table (Oct. 1, 1976, p. 35111) or referred to committee (Mar. 1, 1979, p. 3753) before the proponent is recognized to debate it. A proposition to censure is not germane to a proposition to expel (VI, 236). On Oct. 2, 1980, the House expelled a Member who had been found guilty of accepting money in exchange for a promise to perform certain legislative acts (H. Res. 794, 96th Cong., pp. 28953–78).

A resolution providing that the House immediately proceed to consider whether a Member should be expelled presents a question of privilege (Speaker Clark, Dec. 9, 1913, pp. 584–86).

§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).

[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; * * *

§68. Each House to keep a journal.

§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.

While 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), and while the Speaker has entertained a motion 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 the act (IV, 2785), 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 which had the effect of collaterally changing the tabling of a motion to reconsider. In fact, under the precedents cited in §775, *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, under the provisions of clause 5 of rule I, 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 (clause 5(b) of rule I; H. Res. 5, Jan. 3, 1983, p. 34). While the transaction of any business is not in order before approval of the Journal (VI, 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. A point of order of no quorum is not in order during the reading of the Journal if a quorum has once been established on that day under clause 6(c)(1) of rule XV, and clause 6 of rule XV 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's Precedents, vol. 1, 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; V, 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 under clause 4 of rule XV, 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, pp. 23474–75; 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 5 of rule I (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). 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 which 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)), 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.

In the general but not the universal practice debate has not been closed by the ordering of the yeas and nays until one Member has responded to the call (V, 6101–6105, 6160, 6161). 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.

[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.

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).

On November 22, 1940, p. 13715, the House of Representatives 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 because of 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.

§ 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). By special order, 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. ——). 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 ten 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 (recess or) adjourn for more than three days without consent of the other House (Dec. 21, 1995, p. ——; Jan. 5, 1996, p. ——).

§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). 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). On June 30, 1922, the House adjourned until August 15, 1922, with the consent of the Senate. Pursuant to a concurrent resolution (H. Con. Res. 266) the Senate granted its consent to an adjournment sine die of the House on August 20, 1954, and the House granted its consent to the Senate to an adjournment sine die at any time prior to December 25, 1954. The Senate acting under the authority of the aforementioned resolution adjourned sine die on December 2, 1954. The adjournment resolution in the second session of the 97th Congress provided for 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 granted the consent of the House to adjournment sine die of the Senate at any time prior to January 3, 1983, as determined by the Senate, and the consent of the House 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). Another concurrent resolution in the 97th Congress provided for an adjournment of the Senate to a day certain and granted the consent of the Senate to an adjournment 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). On one occasion the two Houses provided for an adjournment to a certain day, with a provision that if there should be no quorum present on that day the session should terminate (V, 6686). The two Houses have adjourned to a certain day, with a provision that they may be reassembled by the Leadership if legislative expediency so required such reassembling (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), and in the 91st Congress, the two Houses agreed to a concurrent resolution adjourning both to dates certain but which also provided that the House was subject to recall by the Speaker if legislative expediency so warranted (July 20, 1970, p. 24978). In the 93d Congress, first and second sessions, the two Houses agreed to concurrent resolutions adjourning the Congress sine die with a provision that the two Houses could be reassembled by the Leadership (Dec. 22, 1973, p. 43327; Dec. 20, 1974, p. 41815). Recall provisions were also included in the sine die adjournment resolutions for the first and second sessions of the 101st Congress (Nov. 21, 1989, p. 31156; Oct. 27, 1990, p. 36850) and the second session of the 104th Congress (Oct. 3, 1996, p. ——). In the first session of the 102d Congress, the two Houses agreed to a concurrent resolution providing for an adjournment

of the House and Senate until 11:55 a.m. on January 3, 1992, or until recalled by their joint leaderships, with the proviso that when the second session convened at noon on January 3, 1992, the Senate and House would not conduct organizational or legislative business but would adjourn on that day until January 21 and 22, 1992, respectively, unless sooner recalled (H. Con. Res. 260, 102d Cong., Nov. 26, 1991, p. 35840); and that prohibition against the conduct of business was considered not to preclude recognition for one-minute speeches and special-order speeches by unanimous consent (Jan. 3, 1992, p. ——).

A concurrent resolution to provide for adjournment for more than three days is offered in the House as a matter of privilege (V, 6701–6706), and is not debatable (VIII, 3372–3374). 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 can, of course, waive, this requirement and make other determinations regarding its adjournment (see §948, *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 during the month of July providing adjournments in excess of three days until the House has approved general 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 §1007, *infra*).

A resolution providing for an adjournment sine die is not debatable (VIII, 3372–3374), though a Member may be recognized during its consideration under a reservation of objection to a unanimous-consent request that the resolution be agreed to (Oct. 27, 1990, p. 36850).

* * *

§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, and Delegates is $133,600 per annum. The rate of compensation of the Speaker and the Vice President is $171,500 per annum (2 U.S.C. 31; 3 U.S.C. 104) with an additional $10,000 per annum to assist in defraying expenses (2 U.S.C. 31b; 3 U.S.C. 111). The Majority and Minority Leaders of the House receive $148,400 per annum (2 U.S.C. 31). 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. Not later than the first Monday after January 3 of the calendar year following a report of the Commission, the President transmits to Congress his recommendations in light of such report (2 U.S.C. 358). The recommendations of the President take effect only after the enactment into law of a bill or joint resolution approving them in their entirety and an intervening general election of Representatives. A bill or joint resolution to approve such recommendations is privileged (see § 1013, *infra*) if offered by the Majority Leader or his designee within 60 calendar days of the President's transmittal, and must undergo a recorded vote on passage (2 U.S.C. 359).

In 1985, the Salary Act was amended (P.L. 99–190, sec. 135) to require a salary commission report with respect to fiscal year 1987. The President transmitted his recommendations concerning that report in his fiscal year 1988 Budget message (Jan. 5, 1987, H. Doc. 100–11). When not disapproved by the Congress in accordance with the Salary Act (2 U.S.C. 359), those recommendations took effect on March 1, 1987. On return to the normal quadrennial cycle, the President transmitted with his fiscal year 1990 Budget message recommendations concerning a salary commission report with respect to fiscal year 1989 (Jan. 9, 1989, H. Doc. 101–21). Those recommendations were disapproved by Public Law 101–1 (H. J. Res. 129, 101st Cong., Feb. 7, 1989, p. 1708). In 1989, the Salary Act was amended (P.L. 101–194, sec. 701) to redesignate the Commission, refine the parameters for quadrennial adjustments, and provide for privileged consideration of legislation to approve adjustments recommended by the President. The quadrennial review contemplated by the statute did not occur in 1993. The next quadrennial review contemplated by the statute would be conducted in 1997 (2 U.S.C. 356), and the Commission is to report the results

of that review to the President by December 15 of that year (2 U.S.C. 357). Adjustments hereafter are to maintain equal levels of pay among the Speaker, the Vice President, and the Chief Justice; among the Majority and Minority Leaders, the President pro tempore of the Senate, and level I of the Executive Schedule; and among Representatives, Senators, certain judges, and level II of the Executive Schedule (2 U.S.C. 362).

The statutes 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 Sergeant-at-Arms, or in case of his disability the Treasurer of the United States, disburses the pay of Members (31 U.S.C. 148). 4 U.S.C. 113 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.

§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 titles 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 (now House Oversight) to adjust allowances of Members and committees without further action by the House, were enacted into permanent law (85 Stat. 636; 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 (90 Stat. 1448; 2 U.S.C. 57a). The Committee on House Administration (now House Oversight) retains authority under 2 U.S.C. 57 to independently adjust amounts within total allowances and to set terms and conditions of such allowances (Mar. 21, 1977, p. 8227; Apr. 21, 1983, p. 9339).

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

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, such clerical assistants to 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 Oversight.

§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 Oversight 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. ——).

§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 (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 com-

parable levels in the Senate and in the other branches of government. For the text of section 311(d), see § 1013(13), *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 L, *infra*, 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's Precedents, vol. 2, 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 which 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. 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).

Legislative employees acting under orders of the House are not necessarily protected under the clause from judicial inquiry into the constitutionality of their actions. Powell *v.* McCormack, 395 U.S. 486 (1969); Kilbourn *v.* Thompson, 103 U.S. 165 (1880); Dombrowski *v.* Eastland, 387 U.S. 82 (1967). 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 which 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's Precedents, vol. 2, 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 the 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). And 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). But when a Member-elect held an incompatible office after the meeting of Congress he was held to have disqualified himself (I, 492). In other words, the Member-elect may defer until the meeting of Congress 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 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).

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.

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

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 conceived that its prerogative has been invaded, 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. ——; July 21, 1994, p. ——; Aug. 12, 1994, p. ——; Oct. 7, 1994, p. ——; Mar. 21, 1996, p. ——; Apr. 16, 1996, p. ——; Sept. 27, 1996, p. ——; Sept. 28, 1996, p. ——), or declined to proceed further with it (II, 1485). 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 which 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's Precedents, vol. 3, ch. 13, sec. 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. ——). 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). 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 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. ——); 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 largescale driftnet fishing (Feb. 25, 1992, p. ——); 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. ——); and 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. ——).

Clause 5(b) of rule XXI, added in the 98th Congress, 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 (H. Res. 5, Jan. 3, 1983, p. 34).

For discussion as to the prerogatives of the House under this clause, and discussion of the prerogatives of the House to originate appropriation bills, see Deschler's Precedents, vol. 3, ch. 13.

§ 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); Millard *v.* Roberts, 202 U.S. 429 (1906); Rainey *v.* United States, 232 U.S. 310 (1914); Flint *v.* Stone Tracy Co., 220 U.S. 107 (1911).

§ 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 origi-

nated, 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). Prior to 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). Instance where a veto message which 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 the usual but not invariable rule 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, sec. 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, sec. 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. ——) 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, pp. 22958–59; 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 which 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).

§110a. 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); Gardner *v.* Collector, 73 U.S. (6 Wall.) 499 (1868); Matthews *v.* Zane, 20 U.S. (7 Wheat.) 164 (1822); Lapeyre *v.* United States, 84 U.S. (17 Wall.) 191 (1873); 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).

§ 111. Bills which 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 ten 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 ten days after their receipt. President Truman signed several bills passed in the 81st Congress after the convening of the 82d Congress but within ten days (P.L. 910–921; 64 Stat. 1221–1257); and President Reagan approved bills passed in the 97th Congress which were presented after the convening of the 98th Congress (P.L. 97–419 *et seq.*). 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 ten 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 ten 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 ten 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 which is passed by both Houses of Congress during the first regular session of a Congress and presented to the President less than ten 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 which remains with the President ten 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. 21, 1992, p. ——); 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. ——).

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 which was signed into law on December 7, 1974 (P.L. 93–516). As part of the concurrent resolution providing for the sine die adjournment of the first session of the 101st 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). 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 Record (Jan. 23, 1990, p. 3); 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; 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) which is not within the scope of the modern form of concurrent resolutions. See section 192, *infra,* for a discussion of Presidential approval of a joint resolution extending the period for State ratification of a constitutional amendment already submitted to the States. For discussion of "Congressional Disapproval" provisions contained in public laws, see § 1013, *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, 103 S.Ct. 2764 (1983); Consumer's Union, Inc. *v.* FTC, 103 S.Ct. 3556 (1983); Consumer Energy Council of America *v.* FERC, 103 S.Ct. 3556 (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;

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

§122. Counterfeiting.

§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 sixty 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 sixty-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 which 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 §1013(2), *infra*). For further discussion of that Act, and war powers generally, see Deschler's Precedents, vol. 3, ch. 13.

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

§129. Raising and support of armies.

[13] To provide and maintain a Navy;

§130. Provisions for a navy.

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

§131. Land and naval forces.

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

§132. Calling out the 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;

§133. Power over militia.

[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

§134. Power over territory of the United States.

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 XII (§740, *infra*) and Deschler's Precedents, vol. 2, ch. 7, sec. 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 which has not been reported by the committee to which referred within twenty calendar days after its introduction (see §1013(5), *infra*).

§135. Congressional authority over the District of Columbia.

[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.

§136. General legislative power.

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.

§137. Migration or importation of persons.

[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.

§138. Writ of habeas corpus.

§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 to the Constitution.

§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, pp. 452–53), and disposes of foreign gifts which 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).

SECTION 10. [1] No State shall enter into any

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

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.

[2] No State shall, without the Consent of the

§ 147. States not to lay imposts or duties.

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 begin-