the power to rescind a prior ratification of a proposed constitutional amendment, see Idaho *v.* Freeman, 529 F.Supp. 1107 (D.C.D. Idaho, 1981), judgment stayed *sub nom.* National Organization of Women *v.* Idaho, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982).

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

Question has arisen as to the power of a State to recall its assent to a constitutional amendment (V, 7042; footnotes to §§ 225, 234, *infra*) but has not been the subject of a final judicial determination.

§ 193. Decisions of the Court.

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

ARTICLE VI.

§ 194. Validity of debts and engagements.

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

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

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

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

3 The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test

shall ever be required as a Qualification to any Office or public Trust under the United States.

§ 197. Form of oath.

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

§ 198. Administration of oath at organization.

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

Previously it was the custom to administer the oath by State delegations, but beginning with the 71st Congress Members-elect have been sworn in en masse (VI, 8). The Clerk supplies printed copies of the oath to Members and Delegates who have taken the oath in accordance with law, which shall be subscribed by the Members and Delegates and delivered to the Clerk to be recorded in the Journal and Congressional Record as conclusive proof of the fact that the signer duly took the oath in accordance with law (2 U.S.C. 25). See Deschler's Precedents, vol. 1, ch. 2. The Speaker has requested that guests in the gallery rise with the Members during the administration of the oath of office to a Member-elect (Nov. 12, 1991, p. 31255).

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

The Speaker possesses no arbitrary power in the administration of the oath (I, 134), and when objection is made the question must be decided by the House and not by the Chair (I, 519, 520). An objection prevents the Speaker from administering the oath of his own authority, even though the credentials be regular in form (I, 135–138). The Speaker has frequently declined to administer the oath in cases wherein the House has, by its action, indicated that he should not do so (I, 139, 140). And in case of doubt he has waited the instruction of the House (I, 396; VI, 11). There has been discussion as to the competency of a Speaker pro tempore to administer the oath (I, 170), and in the absence of the

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

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

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

§ 201. Privilege of administration of the oath.

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

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

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

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

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

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

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

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

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

§ 206. Decisions of the Court.

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

ARTICLE VII.

§ 207. Ratification of the Constitution.

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

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