# CONSTITUTION

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

**§ 1. The preamble.**

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

**§ 2. Formation of the Constitution.**

# 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. 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 (nonelection) year, the Congress has agreed to adjourn for the month preceding Labor Day. For more on this provision, see § 1105, *infra*.

**§ 7. Electors of the House of Representatives.**

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

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

**§ 8. Decisions of the Court.**

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

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

**§ 9. Age as a qualification of the Representative.**

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

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

**§ 10. Citizenship as a qualification of the Member.**

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

Henry Ellenbogen, Pa., had not been a citizen for seven years when elected to the 73d Congress, nor when the term commenced on March 4, 1933. He was sworn at the beginning of the second session on January 3, 1934, when a citizen for seven and one-half years (see H. Rept. 1431 and H. Res. 370, 73d Cong.). A native of South Carolina who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A woman who forfeited her citizenship through marriage to a foreign subject and later resumed it through naturalization less than seven years 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, when two Members-elect were passengers on a missing aircraft and were presumed dead, the Speaker laid before the House documentary evidence of the presumptive death of one Member-elect and the declaration of a vacancy by the Governor, as well as evidence that the status of the other Member-elect had not been officially determined by State authority. The House then adopted a privileged resolution declaring vacant the seat of the latter Member-elect to enable the Governor of that State to call a special election (Jan. 3, 1973, p. 15). For further discussion, see § 23, *infra*.

**§ 19. Vacancy from resignation.**

In recent practice the Member frequently informs the House by letter that his resignation has been sent to the State executive (II, 1167–1176) and this is satisfactory evidence of the resignation (I, 567) 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 resignation was not so treated (II, 1213). The Speaker having been elected

Vice President and a Representative of the succeeding Congress at the same election, transmitted to the Governor of his State his resignation as a Member-elect (VI, 230, 453). A Member of the House having been nominated and confirmed as Vice President pursuant to the 25th amendment, submitted a letter of resignation as a Representative to the Governor of his State, and a copy of his letter of resignation was laid before the House by the Speaker following the completion of a joint meeting for his swearing-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, p. 15; Feb. 24, 1981, pp. 2916–18). A resolution as to such notification is presented as a question of privilege (III, 2589), as is a resolution declaring a vacancy where 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, p. 15).

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

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

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*.

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

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

**§ 26. House chooses the 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 § 664, *infra*), Postmaster (abolished during the 102d Congress, see § 668, *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).

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

**§ 27. Election of a Speaker.**

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 § 640, *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).

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

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

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

This provision 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, 506 U.S. 224 (1993). For a discussion of Senate impeachment procedures, see §§ 608–20, *infra.*

**§ 41. Judgment in cases of impeachment.**

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

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

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

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

The relative powers of the Congress and the States under this graph have been the subject of much discussion (I, 311, 313, 507, footnote); but

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

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

The meaning of the word "legislature" in this clause of the Constitution has been the subject of discussion (II, 856), as to whether or not it means a constitutional convention as well as a legislature in the commonly accepted meaning of the word (I, 524). The House has sworn in Members chosen at an election the time, etc., of which was fixed by the schedule of a constitution adopted on that election day (I, 519, 520, 522). But the House held that where a legislature has been in existence a constitutional convention might not exercise the power (I, 363, 367). It has been argued generally that the legislature derives the power herein discussed from the Federal and not the State Constitution (II, 856, 947), and therefore that the State constitution might not in this respect control the State legislature (II, 1133). The House has sustained this view by its action (I, 525). But where the State constitution fixed a date for an election and the legislature had not acted, although it had the opportunity, the House held the election valid (II, 846).

**§ 44. Decisions of the Court.**

Decisions of the Supreme Court of the United States: Ex parte Siebold, 100 U.S. 371 (1880); Ex parte Clark, 100 U.S. 399 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884); In re Coy, 127 U.S. 731 (1888); Ohio *v.* Hildebrant, 241 U.S. 565 (1916); United States *v. Mosley, 238 U.S. 383 (1915); United States v.* Gradwell, 243 U.S. 476 (1917); Newberry *v.* United States, 256 U.S. 232 (1921); Smiley *v.* Holme, 285 U.S. 355 (1932); United States *v.* Classic, 313 U.S. 299 (1941); Smith *v.* Allwright, 321 U.S. 649 (1944); Roudebush *v.* Hartke, 405 U.S. 15 (1972); Storer *v.* Brown, 415 U.S. 724 (1974); Buckley *v.* Valeo, 424 U.S. 1 (1976); U.S. Term Limits, Inc., *v.* Thorton, 514 U.S. 779 (1995); and Foster *v.* Love, 522 U.S. 67 (1997). In Public Law 91–285, Congress lowered the minimum age of voters in all Federal, state and local elections from 21 to 18 years. In Oregon *v.* Mitchell, 400 U.S. 112 (1970), the Supreme Court upheld the power of Congress under article I, section 4 and under section 5 of the 14th amendment to the Constitution to fix the age of voters in Federal elections, but held that the tenth amendment to the Constitution reserved to the States the power to estab-