

Election of Members

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Research References

- 1 Hinds §§ 277–633
- 6 Cannon §§ 38–89
- 2 Deschler Ch 8
- U.S. Const. art. I § 5 clause 1

§ 1. In General

Generally

Although Congress has enacted extensive legislation to protect the right to vote and to secure the process against fraud, bribery, and illegal conduct, the actual mechanism for conducting and holding congressional elections has been left largely to the states. Deschler Ch 8 §§ 5, 7. However, under the Constitution, the ultimate validity of elections rests on determinations by the House and Senate as final judges of the elections and returns of their respective Members (U.S. Const. art. I § 5 clause 1). Deschler Ch 8 § 5. Therefore, where the conduct of election officials or of candidates and their agents constitutes fraud or illegal control of election machinery, the House or Senate may void an election and refuse to administer the oath to a Member-elect. Deschler Ch 8 § 7. See Deschler Ch 8 for complete treatment of elections and election campaigns.

Apportionment and Reapportionment

Since the admission of Alaska and Hawaii to statehood, the total membership of the House has remained fixed by statute at 435 seats. *Manual* § 227. By law, these 435 seats are automatically apportioned among the states according to each decennial census. 2 USC § 2a. Under this law, a statistical model known as the “method of equal proportions” is used to determine the number of Representatives to which each state is entitled. While other methods for apportioning House seats may be permitted, Congress’ choice of the equal proportions method has been upheld under the Constitution and was plainly intended to reach as close as practicable to the goal of “one person, one vote.” *Com. of Mass. v Mosbacher, D. Mass.*,

785 F Supp 230 (1992), reversed on other grounds 112 S. Ct. 2767. The method of apportioning the seats in the House is vested exclusively in Congress and neither states nor courts may direct greater or lesser representation than that allocated by statute. Deschler Ch 8 § 1.

Reapportionment proposals have been considered in the House, but have no privileged status under the Constitution and cannot interrupt the regular proceedings of the House. Deschler Ch 8 § 2. Reapportionment legislation has also been considered in the Committee of the Whole. Deschler Ch 8 § 2.5. Proposals relating to apportionment are within the jurisdiction of the Committee on the Judiciary. *Manual* § 679a.

§ 2. Campaign Practices

The power of Congress to regulate the election process extends to the regulation of campaign practices. Deschler Ch 8 § 10. The Federal Election Campaign Act established a new and comprehensive code for campaign practices and expenditures, and contains provisions for investigations and enforcement. 2 USC §§ 431 *et seq.*

The Federal Election Commission is the agency of U.S. government empowered with primary jurisdiction with respect to administration, interpretation and civil enforcement of the Federal Election Campaign Act. *Federal Election Com'n v American Intern. Demographic Services, Inc.*, 629 F Supp 317 (1986). But the House itself has the power to judge elections and to determine whether a candidate was improperly elected to a seat. If violations of the election campaign statutes are so extensive as to render an election void, the House may deny the right to a seat. Deschler Ch 8 § 12.

The Committee on House Oversight has general jurisdiction over measures relating to the election of the President, Vice President, or Members of Congress and over measures relating to the raising, reporting, or use of campaign contributions for House candidates. Rule X clause 1(h). Investigations of specific elections or election practices are usually undertaken pursuant to committee action. (See, for example, 99–1, Apr. 30, 1985, p 9801 [ballot recount].) Investigations of Members' elections may be conducted under the statutory election-contest procedures (see ELECTION CONTESTS AND DISPUTES), or pursuant to a privileged resolution reported from the Committee on Rules (93–2, Aug. 21, 1974, p 29653) or offered on the floor of the House as questions of privilege. *Manual* § 662. However, investigations have also been undertaken by select committees created to review election campaigns and proceedings. Such committees have been created by privileged resolution reported from the Committee on Rules. 92–2, Feb. 28, 1972, p 5717; 93–1, Jan. 15, 1973, p 1058; 93–1, Mar. 15, 1973, p 7957.

A Member's resignation during the investigation effectively terminates the investigation, since the Committee on House Oversight (formerly House Administration) has no further jurisdiction in the matter thereafter. See 95-1, May 4, 1977, p 13391.

A resolution from the Committee on House Oversight relative to the right of a Member to his seat, after investigation of his campaign, is reported and considered as privileged. See Rule XI clause 4(a); Deschler Ch 8 § 13.5. See also 99-1, Apr. 30, 1985, p 9801.

§ 3. Certificates of Election

Certificates of election are issued by each state after congressional elections have been conducted and the results tabulated. The certificates, also termed "credentials" are sent to the Clerk of the House for use in composing the Clerk's roll. While the certificate is not essential to the administration of the oath, any Member or Member-elect has the right to object thereto, by delivering a challenge either to the validity of the election or to the validity of the certificate itself. Deschler Ch 8 § 15. Challenging the administration of the oath, see OATHS.

The House (and not the Speaker or other official) determines whether a Member may be sworn in after an election certificate has been challenged. If a challenge has been directed to a mere irregularity in the form of the certificate, the House will ordinarily seat the Member-elect and declare him finally entitled to the seat. See Deschler Ch 8 § 17.1. But if a certificate is challenged through an election contest or by the allegation of election irregularities, the House may authorize the Member-elect to be sworn but provide that his final right to the seat be referred to committee. That procedure is often followed where a certificate is on file in order not to deprive a state of representation in the House resulting from protracted proceedings. Deschler Ch 8 § 16.4. Still another procedural option that may be pursued by the House is for it to declare that neither candidate be sworn and that the question of *prima facie* and final right to the seat be referred to committee. 99-1, Jan. 3, 1985, p 381.

A circumstance which may require the nullification of a certificate is the intervening death or disappearance of the Member-elect named therein. 93-1, Jan. 3, 1973, pp 15, 16.

The House does not always require a certificate in seating a Member-elect. If he appears without a certificate but his election is uncontested and unquestioned, the House may authorize him to be sworn by unanimous consent. 92-1, May 27, 1971, p 17231; 97-1, July 28, 1981, p 17686. A photographic copy of the original certificate has been accepted without invoking

the unanimous-consent procedure. 97-1, July 9, 1981, p 15215. In some cases where a certificate is delayed, the state of representation will deliver informal communications to the House attesting to the validity of the election of the Member-elect; the House may accept such communications in the absence of a certificate. 88-1, Oct. 30, 1963, p 20612; 89-2, Mar. 30, 1966, p 7219; 95-2, Feb. 21, 1978, p 3852. Even where a Member-elect arrives without a certificate and his election is disputed, the House may by resolution authorize him to be sworn in. Deschler Ch 8 § 17.2.

§ 4. Resignations; Filling Vacancies

A Member properly submits his resignation to an official designated by state law and simply informs the House of his doing so, the latter communication being satisfactory evidence of the resignation. 1 Hinds § 567; 103-1, Jan. 21, 1993, p ____.

Where a vacancy arises in the House by death, resignation, declination, or action of the House, the vacancy must be officially declared in order that a special election may be held. Usually, the state executive declares the vacancy to exist, particularly in cases of death, declination, or resignation. Deschler Ch 8 § 9. If a Governor does not recognize the existence of a vacancy, such as in the case of a presumed death not susceptible of proof, the House itself may initiate the action to have the seat declared vacant. 93-1, Jan. 3, 1973, pp 15, 16. Such a declaration is proper where independent House action has created a vacancy by expulsion or exclusion of a Member. Deschler Ch 8 § 9. In such cases, the House, by privileged resolution, directs the Speaker to notify the state executive. *Manual* § 22. The state executive is also notified where the Member resigns directly to the Speaker, rather than to the Governor of his home state as is customary.

A resolution declaring a seat vacant is used where a Member-elect is unable to take the oath or to resign due to an incapacitating illness. 97-1, Feb. 24, 1981, pp 2916-2918. In this 1981 instance, a letter to the Speaker from the attending physician was inserted in the Record to document the physical condition of the Member-elect. The letter stated that she was in a coma and would be unable to take the oath.