

Enrolling Members; Administering the Oath

§ 1. In General

Before a newly convened body of Representatives-elect can begin exercising all its constitutional functions as a legislative assembly, Members-elect must become full legal Members of the House, having satisfied all qualifications and having sworn to uphold the Constitution and to faithfully perform their duties.⁽¹⁾ The process through which Members-elect become Members consists of four steps: first, the presentation of individual credentials; second, the preparation of the Clerk's roll; third, the administration of the

1. "[T]he legal existence of a legislative body is dependent upon compliance with the constitutional requirements regarding membership." Sutherland, *Statutory Construction* §404 (3d ed. 1943). That general statement of legislative law must be qualified in its applicability to the House of Representatives, since the House has sole jurisdiction over elections and qualifications of Members-elect (U.S. Const. art. I, §5, clause 1). If the House seats a Member, the courts will not question the validity of legislative action in which the Member participates, even lacking satisfaction of election and qualification requirements. See *Lyons v Woods*, 153 U.S. 649 (1894).

oath to duly qualified and elected Members; fourth, the resolution of challenges to the qualifications and elections of individual Members.

This chapter covers the administration of those four steps of proceeding during the organization of a newly convened House of Representatives. The scope of the chapter is limited, however, to the basic procedure governing those orders of business; the reader is referred elsewhere for a discussion of the substantive issues related to credentials, election contests, and elections and election campaigns.⁽²⁾ This chapter likewise does not concern itself with those general aspects of procedure and orders of business connected with organization.⁽³⁾

Some discussion of substantive law is necessarily included in this chapter, such as the rights and duties accruing to those persons elected to Congress but not yet

2. See Ch. 8, *infra*, for the form, validity, and grounds for challenges of credentials. See Ch. 8, *infra*, for elections and election campaigns, and Ch. 9, *infra*, for election contests.
3. See Ch. 1, *supra*, for the orders of business at organization, and for the procedure that is followed.

seated and sworn by the House, since the status of those Members-elect is specifically related to the presentation of credentials, the preparation of the Clerk's roll, and the administration of the oath. Some mention is also made of the substantive state law which the Clerk must review in determining whether to enroll Members-elect.

The preparation, transmission to the House, and custody of the credentials of Members-elect are discussed in this chapter, as are their use in preparing the Clerk's roll. The form of the Clerk's roll and its relationship to the regular roll of the House and to the administration of the oath receives analysis.

The chapter covers the history and form of the oath of office, the procedure of its administration, the types of resolutions relating to the right to be sworn, and the related subject of challenges, including form, procedure, and preliminary House action.

There are several points of substantive procedure which should be kept in mind in any discussion of the enrolling of Members and the administration of the oath. The first is that the enrolling and the swearing in of Members-elect are authorized and regulated by provisions of the U.S. Constitution

and the United States Code.⁽⁴⁾ Therefore, the House and its officers follow an established procedure when undertaking those orders of business.

Second, the House is governed, as stated above,⁽⁵⁾ by general parliamentary law during the period of organization and before the adoption of rules. Since the rules are not adopted until after the administration of the oath, en masse, to the membership-elect,⁽⁶⁾ most of the activities covered in this chapter take place while general parliamentary law, and not the body of standing rules, is in effect.

Third, the order in which activities take place during the organization of the House is governed both by tradition and by statute.⁽⁷⁾ The oath is administered to Mem-

4. The principal provisions are: U.S. Const. art. VI, clause 3 (requirement of oath administration); U.S. Const. art. I, §5, clause 1 (House sole judge of elections and qualifications); 2 USC §25 (procedure of oath administration and record evidence thereof); 2 USC §26 (preparation of Clerk's roll and regularity of credentials).

5. See, generally, Ch. 1, supra.

6. For the priority of oath administration over the adoption of rules, based on 2 USC §25, see Ch. 1, 7, supra.

7. For the sequence of organizational business, while the Speaker is presiding at organization, see Ch. 1, §7, supra.

bers directly after the Speaker has been elected and has been sworn, and before the completion of other organizational business or before the consideration of general legislative business.

The fourth aspect of procedure related to this chapter is the functions of officers. The receipt of credentials by the House, and the preparation and calling of the Clerk's roll, are functions exercised by the Clerk of the preceding House.⁽⁸⁾ The administration of the oath to Members and floor action taken on challenges are presided over by a newly-elected Speaker, whose scope of authority during the organizational period should be reviewed for a comprehensive understanding of how those orders of business are completed by the House.⁽⁹⁾

The final area of substantive procedure relating to the enroll-

8. See 2 USC §26. For the authority and functions of the Clerk of the preceding House at the organization of Congress, see Ch. 1, §5, *supra*.
9. For the Speaker's functions and authority after he has been elected at the convening of a new Congress, see Ch. 1, §7, *supra*. For his entertainment of motions during the organizational period, see Ch. 1, §9, *supra*; for his rulings on action on resolutions, including those relating to oath administration, during organization, see Ch. 1, §12, *supra*.

ment of Members and to the administration of the oath is the delineation of authority between state and federal government. Since the House depends on the individual states for the administration of elections and the preparation of credentials, issues may be suggested in this chapter as to those powers reserved for the states and those granted to the House of Representatives under the U.S. Constitution. The reader is referred to other portions of this work for discussion of such issues.⁽¹⁰⁾

§ 2. Status of Members-and Delegates-elect

The issue has often arisen, both in Congress and in the courts, whether the scope of privileges and prerogatives enjoyed by Members of Congress fully extends to those persons elected to Congress but not yet sworn.⁽¹¹⁾

10. See Ch. 8, *infra*, on elections and election campaigns, and Ch. 9, *infra*, on election contests, which discuss the respective roles of the state and federal governments.
11. In early times, Thomas Jefferson considered the status of Members-elect and concluded that a Member elected "is to every extent a Member except that he cannot vote until he is sworn" (Jefferson's Manual, *House*