and Massachusetts which use the word "Commonwealth" instead of "State," and five others in various State forms.

If there be no objection, the reading of the 28 certificates in the form recommended by the Senate will be waived and they will be printed in full in the Record.

No objection was heard and the certificates were printed in full in the *Congressional Record*.[12]

§ 15.9 On one occasion, the Senate ordered the return to a state of a certificate of appointment to fill a vacancy in that body on receipt of a telegraphic request from the Governor, who advised the Senate that the appointee had declined to serve.

On June 21, 1956,[13] acting President pro tempore William R. Laird 3d, of West Virginia, laid before the Senate two communications from the Governor of Kentucky, one certifying the appointment of a Senator-elect to fill a vacancy, and one to request the return of the certificate, since the appointee had declined to serve. The Senate ordered the certificate returned to the Governor.

12. 117 CONG. REC. 3–5, 92d Cong. 1st Sess. 2 USC §§ 1a and 1b require a certain form for Senate certificates.

13. 102 CONG. REC. 10769, 84th Cong. 2d Sess.

§ 16. Grounds for Challenge

Before Members-elect rise together to be administered the oath of office at the convening of Congress, any Member-elect may object to the right of a colleague to be sworn in. Similarly, the right to be sworn of a Member-elect who is elected to fill a vacancy during a Congress may be objected to.[14] Most challenges are made to the validity of an election, or to the procedure followed therein, or to the qualifications of the Member-elect. However, a challenge may be directed specifically against the certificate of election itself by reason of formal defects or of impeachment by other facts or documents.[15]

Since certificates are prepared in accordance with a customary format[16] and in accordance with state law,[17] defects in form and improper terminology constitute grounds for challenge to a certificate of election. However, if the House is satisfied that a certifi-

14. For the procedure of challenging the right to be sworn, see Ch. 2, supra.

15. Some challenges which are in fact objections to the election or qualifications of a Member-elect are stated as objections to his certificate (see §§ 16.6, 16.7, infra).

16. See § 16.1, infra.

17. See 2 USC § 26.

cate clearly indicates when and where a Member-elect was chosen, and for what term and district, he will be seated.[18]

A more substantial ground for challenge is the claim that the certificate was issued in violation of state law. For example, objection may be made to a certificate issued before the expiration of an interim period mandated by state law, or issued in disregard of official results.[19]

On occasion, citizens' groups or candidates have obtained state court injunctions prohibiting the issuance of a certificate to a certain candidate for reason of election irregularities. Some courts have held, however, that they have no jurisdiction to entertain such suits because they infringe upon the absolute congressional power to judge elections and returns.[20]

Certificates may also be challenged by evidence of other papers and findings of fact. Official transcripts contradicting the certified result of the vote may impeach a certificate. On one occasion, a congressional investigatory committee of a Congress discovered election irregularities of such magnitude as to impeach the certificate of a Member-elect to the next Congress.[1]

Form

§ 16.1 In one instance, the certificate of a Member-elect was objected to on the ground that the certificate stated he was "duly elected as Congressman," instead of "Representative in Congress."

On June 2, 1930,[2] Mr. Robert H. Clancy, of Michigan, arose to object to the validity of the certificate of election of Thomas L. Blanton, Member-elect from Texas, to fill a vacancy. Mr. Clancy's objection was based on the description in the credentials of Mr. Blanton as "Congressman,"

18. See § 16.1, infra.

19. See § 16.2, infra.

20. See § 16.3, infra. See, for an occasion where a "citizens' certificate" was received, § 16.5, infra.

The House has received certificates additional to those allotted to a state, issued by the state executive, where the state claimed representation additional to that apportioned to it by Congress; such certificates have been rejected (see 1 Hinds' Precedents §§ 314–319).

1. See § 16.2, infra.

Findings of fact by investigatory election committees in one Congress are delivered to the next Congress for use in election contests and challenges to seats (see § 14, supra).

2. 72 CONG. REC. 9891, 9892, 71st Cong. 2d Sess.

instead of as "Representative in Congress."

Mr. John N. Garner, of Texas, arose to state that Mr. Clancy's objection was frivolous, since the certificate clearly stated that Mr. Blanton was elected from the 17th District of Texas, and to succeed Mr. Robert Q. Lee, who all the Members of the House knew represented the 17th District in the House. Mr. Clancy responded that the Clerk of the House had notified the authorities in Texas a number of times that they should not designate the office as "Congressman," but as "Representative in Congress," and that the precedents of the House mandated that the credentials must be in order and must correctly describe the office.

The House then voted on the question and directed that the Speaker administer the oath to the challenged Member-elect.[3]

Impeachment by Other Evidence

§ 16.2 Where a candidate's certificate of election was contradicted by other papers of state and county officials and by fact findings of a special campaign expenditures committee, the House declared that neither candidate was to be sworn and that the question be referred to the Committee on House Administration for a determination.

On Jan. 3, 1961,[4] the House adopted a resolution referring to an elections committee the right of Mr. George O. Chambers, of Indiana, who appeared with a certificate of election, and Mr. J. Edward Roush, of Indiana, a contestant, to the congressional seat from the Fifth Congressional District of that state.[5] The House took such action after it appeared that the certificate of election had been impeached by: certificates of error filed by county officials on the counting and judging of ballots; a transcript from the secretary of state of Indiana declaring the contestant duly elected and not the Member-elect with the certificate of election; and findings of fact by a special campaign expenditures committee, which had held hearings on Dec. 16, 1960.[6]

3. *Id.* at p. 9892.

4. 107 CONG. REC. 23, 24, 87th Cong. 1st Sess.

5. See H. REPT. NO. 513, 87th Cong. 1st Sess., Committee on House Administration, relating to the contested election and the validity of the certificate of election.

6. See the remarks of Mr. Ray R. Madden (Ind.) on Feb. 17, 1961, 107 CONG. REC. 2295–97, 87th Cong. 1st Sess. Mr. Madden also stated that

Impeachment by Court Order

§ 16.3 The Clerk placed the name of a Member-elect on the roll where a certificate of election in due form had been filed, although the Clerk had been advised that a state court had issued a writ restraining the secretary of state from issuing such certificate.[7]

On Jan. 3, 1949,[8] at the convening of the 81st Congress, the Clerk addressed the House as follows:

> A certificate of election is on file in the Clerk's office, showing the election of John C. Davies as a Representative-elect to the Eighty-first Congress from the Thirty-fifth Congressional District of the State of New York.
>
> Several communications have been received from the executive deputy secretary of state for the State of New York informing the Clerk that a case is pending before the supreme court, Albany County, N.Y., and that the said secretary of state is restrained from certifying the election of a Representative from this congressional district. However, in view of the fact that a certificate of election in due form has been filed with the Clerk by John C. Davies, the Clerk has therefore placed his name on the roll.

§ 16.4 Where a state court issued a preliminary injunction against the issuance of a certificate to a Member-elect to fill a vacancy and the Speaker declined to administer him the oath, the House authorized that he be sworn but that his final right to a seat be referred to committee.

On May 24, 1972, the House authorized the Speaker to admin-

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the first certificate issued to Mr. Chambers was illegal because it had been signed seven days after the election, instead of 10 days, as mandated by state statute, and that the second certificate issued to Mr. Chambers was illegal because it ignored the certification transcript of the secretary of state.

For additional debate on the action taken by the House in the Roush-Chambers contest, on the validity and force of the certificate of election, see 107 CONG. REC. 10377–91, 87th Cong. 1st Sess., June 14, 1961 (debate on H. Res. 339, declaring Mr. Roush duly elected to the 87th Congress).

7. Since the Congress is the judge of elections and returns, most courts have refused jurisdiction to prohibit the issuance of a certificate. See *Keogh* v *Horner,* 8 F Supp 933 (D. Ill. 1934); *Odegard* v *Olson,* 264 Minn. 439, 119 N.W. 2d 717 (1963); *Burchell* v *State Board of Election Commissioners,* 252 Ky. 823, 68 S. W. 2d 427 (1934). *Contra,* People ex rel. *Brown* v *Board of Suprs. of Suffolk County,* 216 N.Y. 732, 110 N.E. 776 (1915).

8. 95 CONG. REC. 8, 81st Cong. 1st Sess.

ister the oath to Member-elect William S. Conover II, to fill a vacancy in a congressional seat from Pennsylvania. The authorizing resolution provided that Mr. Conover's final right to a seat be referred to the Committee on House Administration, since a citizens' group had obtained a state court preliminary injunction prohibiting the state governor from issuing a certificate of election to Mr. Conover.[9]

Parliamentarian's Note: Mr. Conover had originally appeared to take the oath of office shortly after the special election to fill the vacancy was held on Apr. 25, 1972, but the oath was not administered since it was apparent that unanimous consent would not be granted due to the issuance of the preliminary injunction in the state court.

Impeachment by "Citizens' Certificate"

§ 16.5 Where two persons claimed the same seat in the House, one with a certificate signed by the Governor of the state and the other with a certificate from a citizens' elections committee, the House refused to permit either to take the oath of office and referred the question of their prima facie as well as final right to the seat to a committee on elections.

On Jan. 3, 1934,[10] Speaker Henry T. Rainey, of Illinois, laid before the House the following communication from the Clerk:

> I transmit herewith a certificate of election of Mrs. Bolivar E. Kemp, Sr., to fill the vacancy caused by the death of Hon. Bolivar E. Kemp, from the Sixth Congressional District of the State of Louisiana, received by this office, signed by the Governor of Louisiana, attested by the seal and by the secretary of state of the State of Louisiana.
>
> I also transmit herewith a communication from the Citizens' Election Committee of the Sixth Congressional District of the State of Louisiana in the form of a certificate of election of Hon. J.Y. Sanders, Jr., to fill the vacancy caused by the death of Hon. Bolivar E. Kemp, from the Sixth Congressional District of the State of Louisiana.

The House then passed a resolution referring the prima facie as well as the final right of Mrs. Kemp and of Mr. Sanders to a committee on elections, and de-

9. H. Res. 986, 118 CONG. REC. 18654, 92d Cong. 2d Sess. The text of the resolution explained that Mr. Conover was being sworn so as not to deprive the State of Pennsylvania of representation in the House pending "protracted litigation" for an "indefinite period."

10. 78 CONG. REC. 11, 12, 73d Cong. 2d Sess.

cided that neither contestant should be sworn until the committee had made its report.[11]

On Jan. 29, 1934, the House passed a resolution declaring the election null and void as to both contestants, since the Governor's certificate was issued pursuant to an invalid election, and the citizens' group certificate was invalid per se.[12]

Impeachment by Collateral Matters

§ 16.6 In the 88th Congress, a challenge to the qualifications of an appointee to the Senate was stated as a challenge to the validity of his certificate of appointment.

On Aug. 5, 1964, Senator Everett McKinley Dirksen, of Illinois, challenged the validity of the certificate of appointment of Senator-elect Pierre Salinger, on the ground that Mr. Salinger did not meet the requirement of the California statute that an appointee to the Senate must be a resident for one year before the day of election.[13] Mr. Salinger was permitted to take the oath by the Senate but his credentials were referred to the Committee on Rules and Administration with instructions to report back to the Senate by a specified date.[14]

The Senate later affirmed by resolution Mr. Salinger's entitlement to a seat in the Senate.[15]

§ 16.7 In one instance, an objection based on the failure of a candidate to receive a plurality of votes was stated as a challenge to the validity of the certificate of election.

On Jan. 5, 1937,[16] Mr. John J. O'Connor, of New York, arose to state an objection to the administration of the oath to Arthur B. Jenks, Member-elect from New Hampshire. Mr. O'Connor stated

11. *Id.* at p. 12.

12. 78 CONG. REC. 1521, 73d Cong. 2d Sess. (see H. Res. 231 and H. Rept. No. 334 of the Committee on Elections, submitted Jan. 20, 1934, 78 CONG. REC. 1035).

See also 111 CONG. REC. 18–20 (Jan. 4, 1965), 18691 (July 29, 1965), 22364 (Aug. 21, 1965), 24263–92 (Sept. 17, 1965), 89th Cong. 1st Sess., for an instance where a citizens' group issued a certificate of election on the basis that the regular election was void because of denial of voting rights. The Members-elect with the Governor's certificates were held entitled to their seats.

13. 110 CONG. REC. 18107, 88th Cong. 2d Sess.

14. *Id.* at p. 18120.

15. 110 CONG. REC. 19396, 19422, 88th Cong. 2d Sess., Aug. 13, 1964.

16. 81 CONG. REC. 12, 13, 75th Cong. 1st Sess.

that "despite the fact that a certificate of his election has been filed with the Speaker, it may be impeached by certain facts which tend to show that he has not received a plurality of the votes duly cast in that congressional district."

Mr. Bertrand H. Snell, of New York, arose and stated:

> The Rules and precedents of the House provide that every man who is duly qualified shall take the oath of office at the beginning of the Congress. Our rules provide that qualification is shown by a duly authenticated certificate from the Governor of the State. The gentleman from New Hampshire, Mr. Jenks, has such a certificate and it has been filed with the Clerk of the House.
>
> The laws of the State of New Hampshire provide that a ballot commission is the final adjudicator in regard to these matters.

The House then authorized the administration of the oath to Mr. Jenks.[17]

§ 17. Procedure in Determining Validity; Effect

Once a challenge has been made to the administration of the oath to a Member-elect, based on the validity of his certificate, the Speaker requests him to stand aside as the oath is administered to the other Members en masse. Thereafter the House may either finish the organizational business or may immediately proceed to determine whether the challenged Member-elect may be sworn on the strength of his certificate.[18]

In determining whether a certificate of election is valid or whether it entitles a Member-elect to a seat in the House, the House does not bind itself to rigid criteria. The House is the sole judge of the elections and returns of its Members, and the certificate, prepared and relayed by state officials, is only prima facie proof of entitlement to a seat.[19]

The House and not the Speaker or other official determines whether a Member may be sworn in, and whether a Member may take the oath with final right to the seat.[20] If a challenge has been di-

17. *Id.* at p. 13.

18. See Ch. 2, supra, for the procedure of oath administration and challenges to the right to be sworn. For the procedure governing the House at convening, both before and after the adoption of House rules, see Ch. 1, supra.

19. U.S. Const. art. I, § 5, clause 1. For judicial construction of Congress' power over elections and returns, see USCA Notes to U.S. Const. art. I, § 5, clause 1.

20. See § 17.1, infra (Speaker submitted the question to the House for deter-