

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

17. *Id.* at p. 13.

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-

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-

rected 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.⁽¹⁾

If however a certificate is challenged by the institution of 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.⁽²⁾ Of course, an election may be separately contested under the procedure set forth in 2 USC §§ 381 et seq. without recourse to a challenge on the floor of the right of a Member-elect to take the oath.

A circumstance which may require the nullification of a certifi-

mination and declined to himself rule).

1. See §17.1, *infra*. See also §17.6, *infra* (where the Senate corrected an irregularity in the date for beginning a term by resolution).
2. See §16.4, *supra*. The Committee on House Administration has jurisdiction under House rules over credentials, *House Rules and Manual* §693 (1973), and the matter is often referred to an elections subcommittee of the Committee on House Administration.

cate is the intervening death or disappearance of the Member-elect named therein. Normally the state executive will declare the seat vacant in such a situation. On one occasion where a Member-elect had disappeared and was presumed dead but the state executive refused to nullify the certificate, the House itself declared the seat vacant.⁽³⁾

The House does not always require a certificate in order to determine final right to a seat. Where a Member-elect appears without a certificate but his election is uncontested and unquestioned, the House will authorize him to be sworn in by unanimous consent.⁽⁴⁾ 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 places reliance on such communications in the absence of a certificate.⁽⁵⁾ Even where a Member-elect arrives without a certificate and his election is disputed, the House may authorize him to be sworn in, although a resolution rather than unanimous consent may be necessary to order such action.⁽⁶⁾

3. See §17.4, *in ra*.

4. See §15.5, *supra* (oath administration where certificate delayed).

5. See §17.5, *indra*.

6. See §17.2, *infra* (pending election contest).

*Jurisdiction of House***§ 17.1 When objection is made to the irregularity of a certificate, the question is a matter for the House to determine under the U.S. Constitution.**

On June 2, 1930, when an objection was made to the formal regularity of a certificate of election, Speaker Nicholas Longworth, of Ohio, declined to assume the responsibility of refusing administration of the oath to the Member-elect, but submitted the matter to the House, since section 5 of article I of the Constitution makes the House the judge of the elections, returns, and qualifications of its Members.⁽⁷⁾

§ 17.2 In one instance, the House by resolution authorized the Speaker to administer the oath to a Member-elect whose election was in dispute and who did not possess a certificate of election.

7. 72 CONG. REC. 9891, 9892, 71st Cong. 2d Sess., June 2, 1930. The House affirmed the right of the Member-elect to his seat. The objection to the form of the certificate was based on the fact that the certificate stated that the Member-elect was duly elected as "Congressman" instead of "Representative in Congress" (see § 16.1, supra).

On Mar. 9, 1933, the convening day of the 73d Congress, a resolution was offered to authorize the Speaker to administer the oath to John G. Utterback, of Maine, a Member-elect who appeared without credentials and whose election was being contested under the election contest statutes.⁽⁸⁰⁾ The House adopted the resolution, despite an objection of Mr. Bertrand H. Snell, of New York, that the right to take the oath should be referred to the elections committee, since "one of the first requisites for any Member of this House to receive the oath of office is a certificate in legal and due form from the sovereign State from which he comes."

*Nullification of Certificate***§ 17.3 House adoption of a resolution, authorizing a committee investigation of the right of either of two candidates to a seat and declaring that pending investigation neither candidate shall be sworn, has the effect of**

8. H. Res. 5, 77 CONG. REC. 71, 72, 73d Cong. 1st Sess. Where Members-elect appear without credentials and there is no contest or question as to their elections, the House normally authorizes the administration of the oath by unanimous consent (see § 15.5, supra).

nullifying a certificate of election issued to one of the candidates by the state Governor.

On Jan. 3, 1961,⁽⁹⁾ the House adopted House Resolution No. 1, referring the question of the right of two contestants to a seat from the Fifth Congressional District of Indiana to the Committee on House Administration. The resolution declared that until the committee shall have reported, neither contestant should have the right to be sworn. One of the contestants, George O. Chambers, had a certificate of election from the Governor of the State of Indiana. By adopting the resolution, the House nullified the certificate of election of Mr. Chambers pending the House investigation.

The other contestant to the election, J. Edward Roush, who had not been issued a certificate of election, was finally declared entitled to the seat by the House on June 14, 1961.⁽¹⁰⁾

§ 17.4 Where a Member-elect disappeared between the issuance of his certificate of election and the convening of Congress, and the state executive

9. 107 CONG. REC. 23, 24, 87th Cong. 1st Sess.

10. H. Res. 339, 107 CONG. REC. 10391, 87th Cong. 1st Sess.

utive took no action in relation to the certificate, the House, after receiving a report from the Clerk setting forth the circumstances surrounding the disappearance, declared the seat vacant by resolution.

On Jan. 3, 1973, at the convening of the 93d Congress, Speaker Carl Albert, of Oklahoma, laid before the House communications from the Clerk advising him of the disappearance of an aircraft carrying two Representatives-elect to the House.⁽¹¹⁾ The Clerk's communication stated that for one of those Members-elect, the Governor of the state had declared the congressional seat vacant, pursuant to a presumptive death jury verdict and a certificate of presumptive death.

As to the other Member-elect, Hale Boggs, of Louisiana, the Clerk advised the Speaker that the attorney general of Louisiana had informed him that no action had been taken by the Governor and no action was contemplated to change the status of Mr. Boggs or to change the status of the certificate of election for Mr. Boggs filed with the Clerk.

The House then adopted a resolution (H. Res. 1) declaring the

11. 119 CONG. REC. 15, 93d Cong. 1st Sess.

seat of Mr. Boggs to be vacant and notifying the Governor of Louisiana of the existence of the vacancy.⁽¹²⁾

Reliance on State Communications Absent Certificate

§ 17.5 In authorizing the administration of the oath to Members-elect who appear without credentials, the House may rely upon communications from state executive officials attesting to the validity of the election and results.

On Mar. 9, 1933,⁽¹³⁾ the House authorized the Speaker to administer the oath to Member-elect John G. Utterback, of Maine, whose certificate of election had not yet arrived. Although his election was being contested, he was sworn on the basis of a letter from the Governor stating that although Mr. Utterback had apparently received a majority of the votes cast in the district, the Governor lacked authority to issue credentials due to the terms of a state law which required the concurrent action of the Governor

12. *Id.*

13. 77 CONG. REC. 71, 72, 73d Cong. 1st Sess.

and executive counsel before an election certificate could be issued.

Similarly, on Mar. 19, 1964,⁽¹⁴⁾ the House permitted a Member-elect to be sworn, although her certificate of election had not arrived, after the Clerk advised the House of the receipt of a communication from the secretary of state declaring that unofficial returns indicated the Member-elect was duly elected and that there was no indication of any election contest or dispute.

On Nov. 27, 1963,⁽¹⁵⁾ the House permitted a Member-elect filling a vacancy to be sworn, although a certificate of election had not arrived, after the Speaker laid before the House a telegram from the secretary of state, stating that the Member-elect had been duly elected according to returns received in the secretary's office.

On Oct. 30, 1963,⁽¹⁶⁾ a Member-elect to fill a vacancy was administered the oath in the absence of the certificate of election, pursuant to a telegram from the state Governor stating that the Member-elect was duly elected according to unofficial returns.

On Nov. 15, 1937,⁽¹⁷⁾ the House authorized the administration of

14. 110 CONG. REC. 5730, 88th Cong. 2d Sess.

15. 109 CONG. REC. 22838, 88th Cong. 1st Sess.

16. 109 CONG. REC. 20612, 88th Cong. 1st Sess.

17. 82 CONG. REC. 9, 75th Cong. 2d Sess.

the oath to three Members-elect to fill vacancies from the State of New York, where the Clerk submitted to the House a telegram from the attorney general of the state indicating the election of those Members-elect.

On Oct. 18, 1965,⁽¹⁸⁾ Mr. Edwin W. Edwards, elected to fill a vacancy in a congressional seat from Louisiana, was sworn in although his certificate of election had not arrived. The secretary of state of Louisiana had transmitted to the Clerk a copy of a proclamation of the Governor of Louisiana declaring Mr. Edwards to be duly elected to the House to fill the vacancy, although a general election had not been held; the proclamation was issued because Mr. Edwards had won the Democratic primary election and was the only qualified candidate for the general election to fill the vacancy.

Correction of Date for Beginning of Term (Senate)

§ 17.6 The Senate passed a resolution fixing the date a Senator was sworn, in compliance with federal statute, as the beginning of his term, notwithstanding an earlier date stated in his certificate of election.

^{18.} 111 CONG. REC. 27171, 89th Cong. 1st Sess.

On Apr. 29, 1957,⁽¹⁹⁾ the Senate passed the following resolution (S. Res. 129):

Whereas the certificate of election of Ralph W. Yarborough, chosen a Senator on April 2, 1957, during the present session of the 85th Congress, by the qualified electors of the State of Texas to fill the vacancy in the term ending at noon on the 3d day of January 1959, caused by the resignation of Honorable Price Daniel, states that he was "duly chosen . . . to represent said State in the Senate of the United States for an unexpired term beginning on the 19th day of April 1957, and expiring on the 3d day of January, 1959"; and

Whereas under title 2, section 36, of the United States Code (49 Stat. 23), and precedents of the Senate based thereon, salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify; and

Whereas the said Ralph W. Yarborough has this day duly qualified by taking, in the open Senate, as provided by Rule II, the oath required by the Constitution and prescribed by law, and has subscribed to the same; Therefore, be it

Resolved, That the term of the service of the said Ralph W. Yarborough shall be deemed to have commenced on this the 29th day of April 1957.

^{19.} 103 CONG. REC. 6060, 85th Cong. 1st Sess.

Salaries of Members elected for unexpired terms begin on the date of election (2 USC § 37).