consider the conference report on the bill H.R. 7117, making appropriations for the legislative branch for the fiscal year ending June 30, 1956, and for other purposes, and all points of order against the conference report are hereby waived; that during the consideration of the amendments of the Senate to the bill H.R. 7117 reported from the conference committee in disagreement it shall be in order, notwithstanding any rule of the House to the contrary, to move that the House recede from its disagreement to any such amendment and concur therein with an amendment inserting in the proper place in the bill any or all of the parts of the provisions of the bill H.R. 7440 and any amendments thereto as agreed upon by the House conferees on the bill H.R. 7117.

E. PRIVILEGED BUSINESS

§ 28. Authority and Scope Under Constitution, Statutes, and Rules

As discussed in the preceding sections of this chapter, the regular order of business in the House of Representatives is governed by those provisions of the rules of the House establishing the order of business and making in order, at certain times, specific methods for bringing measures before the House. It has been noted that the regular order of business may be varied by unanimous consent, by suspension of the rules, and by special orders reported from the Committee on Rules and called up as privileged propositions.[18]

By rule and by practice, the House has also determined that a variety of matters of immediate importance should have precedence over the regular order of business, to the extent of interrupting or superseding the consideration of other business. Because of the power of privileged questions to interrupt the regular order of business, only such propositions as fall strictly within the scope and definition of preferential matters may be raised as privileged.

The grant of precedence to certain questions arises from three sources: the United States Constitution, the rules of the House, and statutes enacted pursuant to the rulemaking power of the House (and of the Senate).

Under contemporary practice, only two types of propositions are privileged for consideration solely

18. See § 8, supra (varying order of business generally), § 9, supra (use of motions to suspend rules), § 20, supra (varying order of business by resolutions from Committee on Rules).

because of constitutional provisions: veto messages and resolutions relating to the impeachment power. A veto message is privileged for consideration when received by the House and on a day certain to which postponed, and both the report of a committee on a vetoed bill referred to the committee, and a motion to discharge a committee from the further consideration of a vetoed bill, are highly privileged. The privilege of a veto message arises from article I, section 7, clause 2 of the Constitution:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it.[19]

The constitutional power of the House in the impeachment of civil officers under the United States government arises from article I, section 2, clause 5 of the Constitution:

> . . . and [the House of Representatives] shall have the sole power of impeachment.[20]

The House has determined that propositions to impeach, and reports from the committee investigating charges of impeachment, are highly privileged for consideration in the House.[1]

Two other duties of the House arising specifically under the United States Constitution take precedence over other matters but their privilege does not stem from constitutional provisions alone. Article I, section 5, clause 1 provides that the House shall be the sole judge of the elections, returns, and qualifications of its Members. Reports and resolutions on contested-election cases are privileged, pursuant to provisions of the House rules giving the Committee on House Administration the power to report at any time on the right of a Member to his seat.[2] Contested-election

19. See §§ 28.2–28.8, infra, for the privilege of veto messages. For further discussion of the relative priority of veto messages and other business, see § 31, infra. A distinction may be drawn between the receipt of a Presidential message, returning a vetoed bill, and the consideration of such message. For example, a question of privilege may supersede the disposition of the message but not its receipt.

20. See also U.S. Const. art. I, § 3, clauses 6, 7 and U.S. Const. art. II, § 4.

1. 1. See §§ 28.9–28.11, infra.

2. Rule X.1 clause 22, *House Rules and Manual* § 726 (1973). [Now Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).]

cases were formerly brought up as questions of constitutional privilege, and were held to take precedence over other highly privileged questions, such as veto messages and questions of the privileges of the House.[3] But in the later practice, reports and resolutions relating to contested elections are called up by the Committee on House Administration as privileged under Rule XI, as cited above.[4]

Article VI, clause 3 provides that Representatives shall take an oath. The administration of the oath to Members is highly privileged, as a question of the privileges of the House. The oath is administered to Members-elect en masse at the convening of Congress. But a Member-elect appearing during a session may be administered the oath as a matter of the highest privilege which may interrupt other business.[5]

Certain other actions which the House may take under the Constitution are privileged for consideration, but do not represent "business" within the context of this discussion. Examples are concurrent resolutions for adjournment *sine die* or to a day certain,[6] concurrent resolutions for joint sessions to hear the President and to conduct the electoral count,[7] and motions incident to establishing a quorum.[8]

Some other prerogatives of the House, arising from constitutional provisions, may be presented as questions of the privileges of the House. For example, the arrest or subpena of a Member may involve the privilege from arrest specified in the Constitution, and a subpena for records of the House may involve the principle of separation of powers. In both situations, the subpena is laid before the House as a question of the privileges of the House, and a resolution asserting the privileges of the House is offered from the floor as a question of the privileges of the House.

But in order to constitute a question of the privileges of the House, the matter asserted and the resolution offered must fall within the definition specified in Rule IX[9] and within the scope of the past rulings of the Chair on

3. See, for example, 5 Hinds' Precedents §§ 6641, 6642; and 8 Cannon's Precedents § 2276.

4. See Ch. 17, supra, for privileged committee reports.

5. See §§ 28.20, 28.21, infra. See also § 31, infra.

6. See §§ 29.17, 29.18, infra, for concurrent resolutions on adjournment.

7. See § 29.19, infra.

8. See Ch. 20, supra, on quorums.

9. *House Rules and Manual* § 661 (1979).

whether such a question has been properly presented.

It is not sufficient that a question arises from the Constitution or that a question contemplates action by the House or is one committed to the House under the United States Constitution. For example, a resolution to confirm the nomination of the Vice President, a duty commited to the House under the 25th amendment to the Constitution, is not privileged for consideration. In earlier precedents, it was held that actions directed by the Constitution were privileged for consideration, such as taking the census (under article I, section 2, clause 3). But under later decisions and under the current practice of the House, matters arising and powers conferred under the Constitution are not privileged for consideration (except those enumerated above) unless also constituting a question of the privileges of the House under Rule IX or a privileged matter under other House rules.[10]

The rules of the House[11] enumerate a variety of bills, reports, resolutions, and motions (relating to the order of business) which are privileged for consideration. For example, certain committees are given the power to report to the House at any time on certain subjects. The Committee on Rules may submit privileged reports to the House on the order of business and may obtain consideration of such reports as privileged matters.

Certain kinds of reports are privileged for consideration when reported by any committee, such as reports on resolutions of inquiry, on the contempt of witnesses, and on vetoed bills.[12]

Conference reports are highly privileged for consideration under the rules.[13] A very few resolutions may be immediately considered as privileged when offered as original propositions and without reference to committee, such as concurrent resolutions for adjournment for more than three days or *sine die*, and resolutions brought up under a question of the privileges of the House.[14]

10. See § 28.1, infra. See generally Ch. 11, supra, for the nature and scope of questions of the privileges of the House.

11. See, for example, Rule XI clauses 4(a), 4(b), *House Rules and Manual* §§ 726, 729 (1979).

12. See § 29, infra, for reports on resolutions of inquiry. For reports on contempt of witnesses, see §§ 28.15–28.18, infra. For reports on vetoed bills, see § 28.7, infra.

13. For conference reports and their privilege, see § 29, infra; Ch. 33, infra.

14. For examples of such resolutions and concurrent resolutions, see § 29, infra.

It should be noted that all propositions given precedence for immediate consideration under the rules of the House must fall strictly within the penumbra of the privilege. Nonprivileged provisions included in a measure otherwise privileged, may destroy the precedence of the entire proposition.(15)

Certain resolutions are privileged for consideration pursuant to statute. Congress has passed a number of laws containing so-called "legislative veto" provisions, which allow the House (and/or the Senate) to prevent the implementation of a specific project or plan by the President, or executive agency, by adopting a resolution of disapproval. Sometimes such statutes contain provisions, enacted under the rulemaking power of the House and Senate, giving a certain precedence to resolutions of disapproval when reported from committee or if not reported from committee within a certain time period.(16)

Prior to the adoption (since 1936) of certain requirements in the rules as to the time period before reports of committees could be considered in the House, privileged reports could be considered as soon as reported to the House. Now, however, with certain exceptions, reported measures may not be considered until the third calendar day, exclusive of Saturdays, Sundays, and legal holidays, on which the report has been available [as provided under Rule XI of the House rules (1979). For further discussion, see § 29, infra]. A similar requirement is placed on the consideration of general appropriation bills [see § 29, infra]. The requirement does not apply to: privileged reports from the Committee on Rules [as discussed in § 17, supra]; committee expense resolutions from the Committee on House Administration, which must be available for one day before consideration under Rule XI clause 5 [see § 29, infra]; declarations of war or of national emergencies; disapproval of executive decisions where compliance with the layover rule would prevent congressional disapproval; matters brought to the floor without committee reports; or certain reported measures called up as questions of privilege of the House or of constitutional privilege.(17) [Prior to

15. See § 29, infra.

16. For the relevant texts of various statutes providing privileged procedures for congressional disapproval powers, see *House Rules and Manual* § 1013 (1979).

17. For a detailed discussion of time requirements before considering committee reports, see Ch. 17, supra.

For the ruling of the Chair that a report and resolution offered from

the 94th Congress, all privileged reports from the Committees on House Administration and Standards of Official Conduct were also exempted from the rule.]

Conference reports are not privileged for consideration until the third calendar day (excluding Saturdays, Sundays, and legal holidays) after being filed and printed in the *Congressional Record*.[18]

Cross References

As to privileged matters at the convening of Congress, see Chs. 1, 2, supra.

As to the administration of the oath at the convening of Congress, see Ch. 2, supra.

As to election contests and privileged propositions related thereto, see Ch. 9, supra.

As to questions of privilege, their nature and precedence, see Ch. 11, supra.

As to questions of privilege arising from powers and prerogatives of the House, see Ch. 13, supra.

As to impeachment and privileged matters relating thereto, see Ch. 14, supra.

As to the call of the House in relation to privileged matters, see Ch. 20, supra.

As to motions and their privilege, see Ch. 23, infra.

As to motions and resolutions for adjournment and their privilege, see Ch. 40, infra.

As to the privilege of reports from the Committee on Rules, see § 17, supra.

As to the effect of resolutions from the Committee on Rules relating to precedence, see § 20, supra.

Scope of Constitutional Privilege

§ 28.1 The Committee on Rules reported a resolution making in order and providing for the consideration of a nonprivileged resolution reported from the Committee on the Judiciary confirming the nomination of the Vice President, pursuant to the 25th amendment to the U.S. Constitution.

On Dec. 6, 1973, there was called up by the direction of the Committee on Rules the following resolution, which was adopted by the House:[19]

H. RES. 738

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 27(d)(4) of rule XI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States. After general debate, which shall be confined to the resolution and shall continue not to exceed six hours, to be

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the floor and constituting a question of the privileges of the House was not required to lay over under Rule XI, see § 28.19. infra.

18. See § 29, infra.

19. 119 CONG. REC. 39807, 39813, 93d Cong. 1st Sess.

equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the Committee shall rise and report the resolution to the House, and the previous question shall be considered as ordered on the resolution to final passage.

House Resolution 735 whose consideration was made in order by the special order was reported as a nonprivileged resolution by the Committee on the Judiciary on Dec. 4 and read as follows:[20]

Resolved, That the House of Representatives confirm the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States.

Parliamentarian's Note: The resolution confirming the nomination of the Vice President was not construed as being privileged. Under contemporary practice and rulings, only vetoed bills and impeachment proposals are privileged business directly under the Constitution, because of their unique nature and the language of the relevant constitutional provisions. Other functions committed to the House under the United States Constitution have no inherent precedence over other business.[1]

If a question arising from the express or implied prerogatives of the House under the Constitution constitutes a question of the privileges of the House, under Rule IX, it may be raised in that manner by presenting a resolution for immediate consideration in the House.[2]

Certain types of concurrent resolutions relating to the procedures of the House and Senate, such as adjournment and joint sessions to hear the President and to conduct the electoral count, are also privileged under the Constitution.[3]

Vetoed Bills Privileged Under Constitution

§ 28.2 The motion to postpone further consideration of a veto message to a day certain

20. *Id.* at p. 39419.

1. For earlier practice, where duties entrusted to the House under the Constitution were held privileged for consideration, see 1 Hinds' Precedents §§ 305–308 (census and apportionment privileged, overruled in 6 Cannon's Precedents § 48). See Ch. 8, § 1.2, supra, for another occasion where reapportionment legislation was held by the House to have no inherent privilege for consideration.

Contested-election cases were formerly brought up as questions of constitutional privilege but are now considered as privileged reports of the Committee on House Administration under Rule XI.

2. See §§ 28.12–28.21, infra.

3. See §§ 29.17, 29.18, infra (adjournment); § 29.19, infra (joint sessions).

is privileged and takes precedence over the question of passing the bill notwithstanding the objections of the President.

On Jan. 27, 1970, Speaker pro tempore Carl Albert, of Oklahoma, laid before the House a veto message from the President on H.R. 13111, making appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies. George H. Mahon, of Texas, Chairman of the Committee on Appropriations, was recognized for a preferential motion:[4]

THE SPEAKER PRO TEMPORE: The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

The question is: Will the House, on reconsideration, pass the bill H.R. 13111, the objections of the President to the contrary notwithstanding?

THE SPEAKER:[5] The Chair recognizes the gentleman from Texas (Mr. MAHON).

Mr. MAHON: Mr. Speaker, I move that further consideration of the veto message from the President be postponed until tomorrow.

THE SPEAKER PRO TEMPORE: The gentleman from Texas (Mr. Mahon) is recognized on his motion.

Parliamentarian's Note: Veto messages are not considered before the approval of the Journal but take precedence over all other business except questions of the privileges of the House, the administration of the oath to Members, contested election cases, impeachment propositions, and unfinished business from a previous day on which the previous question has been ordered.[6]

§ 28.3 The consideration of a veto message is in order on Calendar Wednesday.

On May 11, 1932,[7] the House agreed to the motion to dispense with Calendar Wednesday business on that day, a veto message having been laid before the House. Speaker John N. Garner, of Texas, indicated that the motion was not necessary, due to the constitutional privilege of a veto message:

THE SPEAKER: The Chair lays before the House the following message from the President of the United States.

MR. [William H.] STAFFORD [of Wisconsin]: Mr. Speaker, this being Calendar Wednesday, ought not further business be dispensed with before we consider any other business?

THE SPEAKER: Not necessarily.

MR. STAFFORD: This is holy Wednesday.

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4. 116 CONG. REC. 1365–68, 91st Cong. 2d Sess.

5. John W. McCormack (Mass.).

6. See § 31, infra, for the relative precedence of privileged questions.

7. 75 CONG. REC. 10035 40, 72d Cong. 1st Sess.

MR. [CHARLES R.] CRISP [of Georgia]: Is there any other business under Calendar Wednesday?

MR. STAFFORD: No.

MR. CRISP: Mr. Speaker, to save any question, I move that further business under Calendar Wednesday be dispensed with.

The motion was agreed to.

THE SPEAKER: Let the Chair say, however, in connection with this Calendar Wednesday rule, that it does not suspend the Constitution of the United States, which provides that a veto message of the President shall have immediate consideration. The Clerk will read the message.

§ 28.4 Consideration of a veto message on the day to which postponed is highly privileged and becomes the unfinished business.

On Jan. 27, 1970, Speaker pro tempore Carl Albert, of Oklahoma, laid before the House a message from the President, returning without his approval a bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies. The Speaker pro tempore then recognized George H. Mahon, of Texas, Chairman of the Committee on Appropriations, who moved to postpone the further consideration of the veto message until the following day. The Speaker pro tempore answered a parliamentary inquiry on the status of the message in the order of business on the following day: (8)

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, will the gentleman yield?

MR. MAHON: I yield to the gentleman from Michigan.

MR. GERALD R. FORD: Speaking for our side of the aisle, the gentleman is accurate. We are in full concurrence with the motion made by the gentleman from Texas.

I should like to ask this: Is our understanding correct that this will be the first order of business tomorrow?

MR. MAHON: That is my understanding.

THE SPEAKER PRO TEMPORE: The Chair will state, this is highly privileged business and it will be the first order of legislative business tomorrow.

On the following day, Jan. 28, the Journal was approved, a quorum call was had, and Speaker John W. McCormack, of Massachusetts, announced the unfinished business: (9)

THE SPEAKER: The unfinished business is: Will the House, on reconsideration, pass the bill, H.R. 13111, an act making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1970, and for other purposes, the objections of the President to the contrary notwithstanding?

The Chair recognizes the gentleman from Texas (Mr. Mahon) for 1 hour.

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8. 116 CONG. REC. 1365–68, 91st Cong. 2d Sess.

9. *Id.* at p. 1483.

§ 28.5 Consideration of a veto message on the day to which it has been postponed is highly privileged and becomes the unfinished business following the approval of the Journal.[10]

§ 28.6 Where the House had postponed to a day certain a veto message and for the same day created a special order for the reading of Thomas Jefferson's First Inaugural Address, the veto message was first considered.

On Apr. 14, 1948, Speaker Joseph W. Martin, Jr., of Massachusetts, stated, following the approval of the Journal, the order of business: (1) the unfinished business, a veto message postponed to that day by motion; (2) the reading of Jefferson's First Inaugural Address by a Member designated by the Speaker pursuant to a special order for that day; and (3) unanimous-consent requests and one-minute speeches.[11]

§ 28.7 A report from a committee, to which a vetoed bill has been referred, recommending the passage of such bill over a veto is privileged for consideration.

On Aug. 17, 1951, a privileged report was filed by a committee to which a vetoed bill had been referred:[12]

> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I submit a privileged report from the Committee on Veterans' Affairs on the bill (H.R. 3193) to establish a rate of pension for aid and attendance under part III of Veterans' Regulation No. 1 (a), as amended.
>
> The Clerk read as follows:
>
> > Your Committee on Veterans' Affairs, to whom was referred the bill, H.R. 3193, entitled "A bill to establish a rate of pension for aid and attendance under part III of Veterans' Regulation No. 1 (a), as amended," together with the objections of the President thereto, having reconsidered said bill and the objections of the President thereto, reports the same back to the House with the unanimous recommendation that said bill do pass, the objections of the President to the contrary notwithstanding.

The vetoed bill was immediately considered and, after debate, the veto was overridden by the House.

§ 28.8 A motion to discharge a committee from further consideration of a vetoed bill presents a question of the highest privilege.

10. 94 CONG. REC. 4427, 80th Cong. 2d Sess., Apr. 14, 1948; 116 CONG. REC. 1483, 91st Cong. 2d Sess., Jan. 28, 1970; and 119 CONG. REC. 36202, 93d Cong. 1st Sess., Nov. 7, 1973.

11. 94 CONG. REC. 4427, 80th Cong. 2d Sess.

12. 97 CONG. REC. 10197, 82d Cong. 1st Sess.

On Sept. 7, 1965, Speaker pro tempore Carl Albert, of Oklahoma, recognized for a privileged motion to discharge a committee from the further consideration of a vetoed bill (referred to the committee on Aug. 23): (13)

> MR. [DURWARD G.] HALE [of Missouri]: Mr. Speaker, I rise to a question of the highest privilege of the House, based directly on the Constitution and precedents, and offer a motion.
>
> THE SPEAKER PRO TEMPORE: The Clerk will report the motion.
>
> The Clerk read as follows:
>
> > Motion by Mr. Hall:
> >
> > *Resolved,* That the Committee on Armed Services be discharged from further consideration of the bill H.R. 8439, for military construction, with the President's veto thereon, and that the same be now considered.

In response to a parliamentary inquiry, the Speaker pro tempore stated that a motion was in order to table the motion to discharge. The House agreed to a motion to table offered by Mr. L. Mendel Rivers, of South Carolina.

Parliamentarian's Note: The Committee on Armed Services, to which had been referred the vetoed bill, had reported, previous to the motion to discharge, a similar bill (H.R. 10775) containing a revision of the language to which the President had objected in his veto message.

13. 111 CONG. REC. 22958, 22959, 89th Cong. 1st Sess.

Impeachment Propositions Privileged Under Constitution

§ 28.9 Charges of impeachment presented on the floor by a Member constitute a question of high constitutional privilege.

On Jan. 14, 1936, Speaker Joseph W. Byrns, of Tennessee, recognized for one hour a Member who rose to state a question of constitutional privilege: (14)

> MR. [ROBERT A.] GREEN [of Florida]: Mr. Speaker, I realize that the time of adjournment has almost arrived, and I dislike to ask the indulgence of my colleagues for a few minutes, but I shall be just as brief as possible. I rise to a question of constitutional privilege.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. GREEN: Mr. Speaker, I rise to a question of constitutional privilege. Mr. Speaker and Members of the House, on my own responsibility, as a Member of this House, I impeach Halsted L. Ritter, a United States district judge for the southern district of Florida, for high crimes and misdemeanors. In substantiation of this impeachment I specify the following charges: . . .

By motion, the charges were referred to the Committee on the Judiciary.

Similarly on Jan. 24, 1939, Mr. J. Parnell Thomas, of New Jersey,

14. 80 CONG. REC. 404, 74th Cong. 2d Sess.

rose to a question of constitutional privilege and offered a resolution impeaching the Secretary of Labor and various other officials of the federal government. The House referred the resolution by motion to the Committee on the Judiciary.[15]

Parliamentarian's Note: An impeachment proposition which is constitutionally privileged under the precedents may even supersede election cases and the approval of the Journal.[16] A direct proposition to impeach a federal civil officer is a question of high privilege in the House, but a resolution proposing an investigation of charges, with the view towards impeachment, is not a privileged matter under the precedents.[17]

§ 28.10 A committee to which has been referred privileged resolutions for the impeachment of a federal civil officer may report and call up as privileged resolutions of impeachment and resolutions incidental to the impeachment question.

On Mar. 2, 1936, Hatton W. Sumners, of Texas, Chairman of the Committee on the Judiciary, called up for immediate consideration as a privileged matter House Resolution 422, impeaching U.S. District Court Judge Halsted Ritter. Charges of impeachment had been referred to the committee in the 74th Congress.[18] The House adopted the resolution impeaching Judge Ritter, who was later convicted of the impeachment charges by the Senate.

Parliamentarian's Note: A committee to which has been referred privileged resolutions for the impeachment of a federal civil officer may report and call up as privileged resolutions incidental to consideration of the impeachment question, such as resolutions authorizing the taking of testimony and the defrayment of investigatory expenses from the contingent fund of the House,[19] and resolutions providing for the selection of managers to prosecute the impeachment before the Senate.[20]

The report of the committee, to which charges have been referred, recommending against impeachment or recommending that the impeachment trial be abated, are also privileged.[1]

15. 84 CONG. REC. 702–11, 76th Cong. 1st Sess.

16. See the discussion at § 31, infra; 3 Hinds' Precedents §§ 2045–2048; and 6 Cannon's Precedents §§ 468, 469.

17. See 3 Hinds' Precedents §§ 2050, 2546.

18. 80 CONG. REC. 3066, 74th Cong. 2d Sess.

19. See 6 Cannon's Precedents § 549.

20. See 6 Cannon's Precedents § 517.

1. See 6 Cannon's Precedents § 514; 84 CONG. REC. 3273, 76th Cong. 1st Sess., Mar. 24, 1939.

§ 28.11 The consideration of a conference report may be interrupted by a question of constitutional privilege involving the impeachment of a federal civil officer.

On Jan. 17, 1933, the House had agreed to a conference report and had not yet taken action on an amendment reported in disagreement by the conferees. Speaker John N. Garner, of Texas, ruled that a highly privileged constitutional question on impeachment took precedence over the further consideration of the amendment in disagreement:[(2)]

THE SPEAKER: The conference report has been agreed to, but the amendment in disagreement has not been acted upon. It is the understanding of the Chair that a question of constitutional privilege may intervene between the agreement to the conference report and consideration of an amendment in disagreement. There is a hiatus there when the conference report has been agreed to and the House may go on, indefinitely, without considering the amendments in disagreement.

MR. [CARL, R.] CHINDBLOM [of Illinois]: May I suggest to the Chair that the amendment in question is included in the conference report to the extent that the conferees report to the House that they have been unable to agree or have not agreed upon the amendment. Of course, it comes up as a part of the conference report. If it is not a part of the conference report, I respectfully submit to the Chair it has no privilege whatever and may not be called up at all except under a special rule, or until reached on the calendar.

THE SPEAKER: The Chair is inclined to think that the philosophy of the rule would be that the conference report having been disposed of, the other question with respect to completing the consideration of the report may be delayed a day or two days if the House is disposed to do so and, in the meantime, a question of constitutional privilege can intervene.

MR. CHIINDBLOM: May I add the further suggestion to the Chair that that might well be so if the gentleman in charge of the conference report waived his right?

MR. [JOSEPH W.] BYRNS [of Tennessee]: Of course I do not do that.

THE SPEAKER: Let the Chair call the attention of the gentleman from Illinois to the rule with respect to questions of privilege:

> Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members individually, in their Representative capacity only, and shall have precedence of all other questions, except motions to adjourn.

It seems to the Chair this language is clear and that a question of constitutional privilege is undoubtedly in order at any time and only a motion to adjourn could interfere with it.

2. 76 CONG. REC. 1953, 1954, 72d Cong. 2d Sess.

Questions of Privilege of the House

§ 28.12 A question of the privileges of the House arising under the Constitution, relating to the sole power of the House to originate revenue measures and alleging that the Senate, by its amendment to a House bill, has violated article I, section 7 of the United States Constitution, may be raised at any time when the House is in possession of the papers, and the question may even be presented pending the motion to call up the conference report on the bill.

On June 20, 1968, Mr. Wilbur D. Mills, of Arkansas, called up a conference report on H.R. 15415, the Revenue and Expenditure Act of 1968. Pending his request that the statement of the managers be read in lieu of the report, Mr. H. R. Gross, of Iowa, rose to a question of the privileges of the House and was recognized by Speaker pro tempore Charles M. Price, of Illinois:[3]

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Arkansas?

MR. GROSS: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1222

Resolved, That Senate amendments to the bill, H.R. 15414, in the opinion of the House, contravene the first clause of the seventh section of the first article of the Constitution of the United States, and are an infringement of the privileges of this House, and that the said bill, with amendments, be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. GROSS] is recognized for 1 hour.

Parliamentarian's Note: A question of the privileges of the House has the highest privilege for consideration in the House, superseding the approval of the Journal, although it has been held in the past that the consideration of a contested election case (considered at that time as a question of constitutional privilege) took precedence over such a question.[3] In presenting a question of the privileges of the House, however, the Member raising the question must present a resolution before being recognized, and must satisfy the Chair that the resolution properly constitutes a question of privilege under Rule IX and the precedents relating thereto.[5]

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13. 114 CONG. REC. 17970, 90th Cong. 2d Sess.

4. See § 31, infra.

5. See Ch. 11, supra, for a complete discussion of questions of the privileges of the House (and of the Member).

§ 28.13 A question involving a question of the privileges of the House under Rule IX takes precedence over District of Columbia business under Rule XXIV clause 8.

On Dec. 14, 1970, Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard H. Ichord, of Missouri, to present a resolution under a question of the privileges of the House (asserting the privileges of the House with respect to the printing and publishing of a committee report which had been enjoined by a federal court) before recognizing the Chairman of the Committee on the District of Columbia for business reported from that committee. Under Rule XXIV clause 8, the regular order of business was the consideration of District of Columbia business.[6]

§ 28.14 A subpena duces tecum served upon the Clerk of the House and transmitted by the Clerk to the Speaker was held to be a matter of the highest privilege (as a question of the privileges of the House) and to supersede the continuation of the call of committees under the Calendar Wednesday rule.

On Feb. 8, 1950,[7] Speaker Sam Rayburn, of Texas, overruled a point of order against the consideration of highly privileged business on Calendar Wednesday:

> MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. MARCANTONIO: Mr. Speaker, this is Calendar Wednesday, and I ask that the business of Calendar Wednesday proceed. I submit that the regular order is the continuation of the call of committees by the Clerk.
>
> THE SPEAKER: The Chair at this time is going to lay before the House a matter of highest privilege.

The Speaker laid before the House a communication from the Clerk transmitting a subpena issued to him by a federal district court and directing the production of committee executive session material. There was offered and adopted a resolution in response to the subpena.

Resolutions and Reports on Contempt of Witnesses (Privilege of House)

§ 28.15 It is in order to call up at any time, as a question of the privileges of the House, a resolution directing the Speaker to certify an indi-

6. 116 CONG. REC. 41355–74, 91st Cong. 2d Sess.

7. 96 CONG. REC. 1695, 81st Cong. 2d Sess.

vidual in contempt of the House or its committees.

On Aug. 2, 1946, Speaker Sam Rayburn, of Texas, indicated in response to a parliamentary inquiry that calling up a resolution, directing the Speaker to certify to the United States Attorney the refusal of a witness to testify, was a matter of the highest privilege:[8]

PROCEEDING AGAINST RICHARD MORFORD

THE SPEAKER: For what purpose does the gentleman from Mississippi rise?

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I send to the Clerk's desk a privileged resolution and ask that it be read.

THE SPEAKER: The Clerk will read the resolution.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, has not the Speaker the power to determine the order of business by recognizing or not recognizing gentlemen requesting the consideration of various pieces of legislation? I make that parliamentary inquiry because there is very important business pending before the House—social security, appropriations for terminal-leave pay, and for automobiles for amputees—and I see no reason why this resolution should be given preference.

THE SPEAKER: It would not be given preference if it were an ordinary resolution, but this is a resolution of high privilege.

Parliamentarian's Note: A Member may make a point of order that a quorum is not present during the reading of a privileged report relating to the refusal of a witness to testify before a committee.[9]

Although the power to deal directly with the contempts of witnesses is implied in the United States Constitution, Congress has provided by statute for a criminal penalty and for a procedure whereby contempts are certified to the United States Attorney.[10]

§ 28.16 Reports from a committee on testimony which has purged a witness of contempt based upon his previous refusal to testify, and resolutions providing that the Speaker certify such reports to the United States Attorney, are privileged.

On July 23, 1954, a privileged report and resolution were submitted and immediately considered in the House:[11]

8. 92 CONG. REC. 10746, 79th Cong. 2d Sess.

9. 92 CONG. REC. 10592, 79th Cong. 2d Sess., July 31, 1946.

10. For the power of the House to punish for contempt, see Ch. 13, supra.

11. 100 CONG. REC. 11650, 83d Cong. 2d Sess.

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, by direction of the Committee on Un-American Activities, I submit a privileged report (Rept. No. 2472).

The Clerk read as follows:

IN THE MATTER OF FRANCIS X. T. CROWLEY

Mr. Velde, from the Committee on Un-American Activities, submitted the following report: . . .

MR. VELDE: Mr. Speaker, I offer a resolution (H. Res. 681) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives of the United States, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that legal proceedings based upon the matter certified by the Speaker pursuant to H. Res. 541, 83d Congress, second session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law.

MR. VELDE: Mr. Speaker, I yield such time as he may desire to the gentleman from California [Mr. Jackson].

§ 28.17 Reports from committees on the refusal of witnesses to testify, and resolutions providing that the Speaker certify a report on the refusal of a witness to testify to a United States Attorney are privileged for consideration.

On Apr. 9, 1952,[12] the Committee on Ways and Means submitted a privileged report which was immediately considered:

MR. [ROBERT L.] DOUGHTON [of North Carolina]: Mr. Speaker, by direction of the Committee on Ways and Means, I submit a privileged report (H. Rept. No. 1748).

THE SPEAKER:[13] The Clerk will read the report.

The Clerk read the report.

(For House Report No. 1748, see proceedings of the House of Tuesday, April 8, 1952, pp. 3756–3773.)

MR. DOUGHTON: Mr. Speaker, I offer a privileged resolution (H. Res. 602) and ask for it immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Ways and Means of the House of Representatives as to the willful and deliberate refusals of Henry W. Grunewald to answer questions and his willful and deliberate failures to produce books, records, and documents before the said Committee on Ways and Means, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Henry

12. 98 CONG. REC. 3853, 3854, 82d Cong. 2d Sess.

13. Sam Rayburn (Tex.).

W. Grunewald may be proceeded against in the manner and form provided by law.

MR. DOUGHTON: Mr. Speaker, I yield such time as he may care to use to the gentleman from California [Mr. King], chairman of the subcommittee of the Committee on Ways and Means on the Administration of the Internal Revenue Laws.

§ 28.18 A report of the Committee on Un-American Activities dealing with the contempt of a witness was considered on a Calendar Wednesday.

On June 26, 1946,[14] which was Calendar Wednesday under the rule, Mr. John S. Wood, of Georgia, called up a privileged report from the Committee on Un-American Activities, dealing with the contempt of a witness before the committee.

§ 28.19 A report relating to the refusal of a witness to respond to a subpena duces tecum issued by a committee gives rise to a question of the privileges of the House and, under Rule IX, may be considered on the same day reported notwithstanding the requirement of Rule XI clause 27(d)(4) [Rule XI clause 2(l)(6) in the 1979 House Rules and Manual] that reports from committees be available to Members for at least three calendar days prior to their consideration.

A resolution directing the Speaker to verify to the U.S. Attorney the refusal of a witness to respond to a subpena issued by a House committee may be offered from the floor as privileged, and a committee report to accompany the resolution may therefore be presented to the House without regard to the three-day availability requirement for other reports.

On July 13, 1971, Harley O. Staggers, of West Virginia, the Chairman of the Committee on Interstate and Foreign Commerce, rose to a question of the privileges of the House (relating to the refusal of a witness to respond to a subpena issued by said committee) and submitted a privileged report from the committee (H. Rept. No. 92–349). Mr. Sam M. Gibbons, of Florida, made a point of order against the consideration of the report and the accompanying resolution (H. Res. 534, directing the Speaker to certify to the United States Attorney the refusal of the witness to comply with the subpena). Mr. Gibbons' point of order was based on Rule XI clause 27(d)(4), which requires

14. 92 CONG. REC. 7589–91, 79th Cong. 2d Sess.

committee reports to be available for at least three calendar days before being considered in the House. After hearing extensive argument on the point of order, Speaker Carl Albert, of Oklahoma, overruled the point of order as follows:[15]

> The Chair is ready to rule.
>
> The Chair appreciates the fact that the gentleman from Florida has furnished him with a copy of the point of order which he has raised and has given the Chair an opportunity to consider it.
>
> The gentleman from Florida (Mr. Gibbons) makes a point of order against the consideration of the report from the Committee on Interstate and Foreign Commerce on the grounds that it has not been available to Members for at least 3 days as required by clause 27(d) (4) of rule XI. The Chair had been advised that such a point of order might be raised and has examined the problems involved.
>
> The Chair has studied clause 27(d) (4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970. That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."
>
> The Chair has also examined rule IX, which provides that:
>
> > Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings . . . and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the provision in rule IX that questions of

15. 117 CONG. REC. 24720–23, 92d Cong. 1st Sess.

privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds that the report is of such high privilege under the inherent constitutional powers of the House and under rule IX that the provisions of clause 27(d)(4) of rule XI are not applicable .

Therefore, the Chair overrules the point of order.

The Clerk will continue to read the resort.

Administration of Oath (Question of Privileges of House)

§ 28.20 Administration of the oath to a Member-elect is a matter of high privilege and is in order after the previous question is ordered on the pending question (a bill reported back from the Committee of the Whole to the House).

On Oct. 3, 1969, the Committee of the Whole rose and reported back to the House, with sundry amendments, a bill (H. R. 14000) authorizing appropriations for military procurement. Speaker John W. McCormack, of Massachusetts, stated that under the rule the previous question was ordered. Further proceedings were interrupted for the administration of the oath to a Member-elect:[16]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that the gentleman from Massachusetts, Mr. Michael J. Harrington, be permitted to take the oath of office today. His certificate of election has not arrived, but there is no contest, and no question has been raised with regard to his election.

THE SPEAKER: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. Harrington appeared at the bar of the House and took the oath of office.

Parliamentarian's Note: The oath was administered at such time as to allow the new Member to vote on the pending bill. (The administration of the oath to Members arises under the United States Constitution [art. VI, clause 3] but is presented as a question of the privileges of the House, which takes precedence over even the approval of the Journal.)[17]

It should be noted that most of the Members-elect are sworn in on the day on which the House convenes for a new Congress, and that the administration of the oath at that time has, by tradition

16. 115 CONG. REC. 28487, 91st Cong. 1st Sess.

17. See § 31, infra.

and statute, a place in the order of business on opening day. For example, the election of the Speaker precedes the administration of the oath to Members.[18]

§ 28.21 Debate on a privileged resolution reported from the Committee on Rules was interrupted to allow a new Member to take the oath of office.

On Dec. 24, 1963, there was under consideration in the House a resolution from the Committee on Rules making a special order of business (H. Res. 600, waiving points of order against a conference report). Debate on the resolution was interrupted for the privileged question of the administration of the oath to a new Member:[19]

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that the gentleman from Texas, Mr. James Jarrel Pickle, be permitted to take the oath of office today. His certificate of election has not arrived, but there is no contest and no question has been raised with regard to this election.
>
> THE SPEAKER:[20] Is there objection to the request of the gentleman from Oklahoma?
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, reserving the right to object, and I am not going to object, I just wanted to observe that I have checked with our Texas people on this side and they tell me there is no contest about the gentleman's election.
>
> Mr. Speaker, I do not know how he is going to vote today. I rather assume he will vote against us. But I hope, with the indulgence of the Members on our side, if he has come up here from Texas to be here the day before Christmas, I think we ought to let him vote.
>
> Mr. Speaker, I withdraw my reservation.
>
> MR. ALBERT: Mr. Speaker, may I observe that the charity of our beloved minority leader becomes not only himself but the season.
>
> Mr. Pickle appeared at the bar of the House and took the oath of office.

Parliamentarian's Note: The request for unanimous consent that the oath be administered was necessary not to bring up the question of oath administration (which is highly privileged) but to actually allow the administration of the oath, the Member's-elect certificate of election not having arrived.

Question of Personal Privilege

§ 28.22 A question of personal privilege (as opposed to a question of the privileges of the House) cannot be raised before the approval of the Journal.

18. See 1 Hinds' Precedents §§ 212, 214. For business and procedure at the convening of the House generally, see Chs. 1, 2, supra.
19. 109 CONG. REC. 25526, 88th Cong. 1st Sess.
20. John W. McCormack (Mass.).

On Oct. 8, 1968,[1] before the reading and approval of the Journal, on a day when the House had ordered locked the doors to the Chamber (various calls of the House and privileged motions having interrupted the reading of the Journal) Speaker John W. McCormack, of Massachusetts, declined to recognize a Member on a question of personal privilege:

> MR. [ROBERT] TAFT [Jr., of Ohio]: Mr. Speaker——
>
> THE SPEAKER: For what purpose does the gentleman from Ohio rise?
>
> MR. TAFT: Mr. Speaker, I have a privileged motion.
>
> MR. [SIDNEY R.] YATES [of Illinois]: A point of order, Mr. Speaker. That is not in order until the reading of the Journal has been completed.
>
> THE SPEAKER: Will the gentleman from Ohio state his privileged motion?
>
> MR. TAFT: Mr. Speaker, my motion is on a point of personal privilege.
>
> THE SPEAKER: Will the gentleman from Ohio state whether it is a point of personal privilege or a privileged motion?
>
> MR. TAFT: It is a privileged motion, and a motion of personal privilege.
>
> Under rule IX questions of personal privilege are privileged motions, ahead of the reading of the Journal.
>
> THE SPEAKER: The Chair will advise the gentleman that a question of personal privilege should be made later after the Journal has been disposed of.
>
> If the gentleman has a matter of privilege of the House, that is an entirely different situation.

When Mr. Taft again sought recognition and sought to raise a question of the privileges of the House, the Speaker heard the question and ruled that no question of the privileges of the House was stated. An appeal from the Speaker's ruling was laid on the table.

Parliamentarian's Note: Questions of personal privilege may not be raised in Committee of the Whole.

In presenting a question of personal privilege the Member does not submit a resolution but is recognized to discuss the issue presented, if the Chair finds that a question of personal privilege has been properly stated under Rule IX.[2] Questions of personal privilege take precedence over other business except contested electian cases, impeachment propositions, questions of the privileges of the House, and approval of the Journal, but may not be presented while another Member has the floor.[3]

§ 28.23 While a question of privileges of the House is pending, the Chair does not recognize a Member to present a question of personal privilege.

1. 114 CONG. REC. 30214–16, 90th Cong. 2d Sess.

2. See Ch. 11, supra, for a discussion of questions of personal privilege.

On Apr. 20, 1936, Speaker Joseph W. Byrns, of Tennessee, ruled that a question of personal privilege could not be raised while another question of privilege (of the House) was pending:[4]

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I rise to a question of the privilege of the whole House and offer a privileged resolution, which I ask the Clerk to read.

The Clerk read as follows:

HOUSE RESOLUTION 490

Whereas during the House proceedings on April 17, 1936, the gentleman from Washington [Mr. Zioncheck] attempted to speak out of order and to indulge in personalities, when he was admonished by the Chair, as follows—

MR. [MARION A.] ZIONCHECK [of Washington]: Mr. Speaker, I rise to a point of personal privilege.

THE SPEAKER: The gentleman cannot do that while another question of privilege is pending.

Parliamentarian's Note: Although highly privileged, a question of privilege may not be presented while another Member has the floor.[6] And a point of order, such as a point of order that a quorum is not present, or a point of order that the Member rising to a question of privilege has not presented a question of privilege, may interrupt a Member stating a question of privilege.[6]

A question of privilege is not entertained pending a vote on a motion to adjourn.[7]

§ 29. Certain Bills, Resolutions, and Reports

Under Rule XI clause 22,[8] specified committees have the right to report to the House at any time on certain subjects within their jurisdiction.[9]

Prior to the implementation of section 133 (c) of the Legislative Reorganization Act of 1946 into the rules, in Rule XI clause 27(d)(4)[10] the right of reporting

3. See § 31, infra. A question of personal privilege may supersede the consideration (or disposition) but not the presentation of a message from the President or the Senate.
4. 80 CONG. REC. 5704, 74th Cong. 2d Sess.
5. See 80 CONG. REC. 3720, 74th Cong.
6. See 84 CONG. REC. 8468, 8469, 76th Cong. 1st Sess., June 30, 1939.
7. 116 CONG. REC. 11940, 91st Cong. 1st Sess., Apr. 15, 1970.
8. *House Rules and Manual* § 726 (1973) [now Rule XI clause 4(a), *House Rules and Manual* § 726 (1979)].
9. The privilege bestowed by the rule is limited to the subject matter specified in the rule; inclusion of other subjects may destroy the privilege of the proposition (see §§ 29.1–29.3, infra).
10. *House Rules and Manual* § 735(d)(4) (1973).