

On Jan. 10, 1967,⁽⁵⁾ during debate on a resolution relating to the right to be sworn of Mr. Adam Clayton Powell, Jr., of New York, who had been asked to stand aside when the oath was administered to other Members, unanimous consent was asked by Mr. Carl Albert, of Oklahoma, that Mr. Powell be permitted to participate in the debate. The request was granted and the challenged Member-elect delivered remarks in debate.

Right to Compensation

§ 2.6 A Senator-elect who postponed the choice between his congressional seat and an incompatible office six days beyond the convening of Congress waived his congressional pay for that period.

Mr. Jacob Javits, Senator-elect from New York, did not take the oath of office in the 85th Congress until Jan. 9, 1957, although the Senate had convened on Jan.⁽⁶⁾ Mr. Javits appeared late because he did not resign from his position as Attorney General of New York until the day he appeared to take the oath.⁽⁷⁾ He waived his congress-

5. 113 CONG. REC. 15, 90th Cong. 1st Sess.

6. 103 CONG. REC. 340, 85th Cong. 1st Sess.

7. *Biographical Directory of the American Congress 1774-1971*, S. Doc.

sional salary for the period during which he delayed taking the oath.⁽⁸⁾

§ 3. Presentation of Credentials

The device through which the House satisfies itself that it is composed at its first meeting of duly-elected Representatives is the presentation of credentials.⁽⁹⁾ Although the credentials themselves may give rise to substantive questions as to form, validity, and grounds for challenge,⁽¹⁰⁾ the presentation and use of the credentials is largely an administrative matter. Although there are still differences among the states in the preparation of credentials, and in their trans-

No. 92-8, pp. 1183-84, 92d Cong. 1st Sess. (1971).

8. *Senate Manual* §863 (1971) (statistical section). An early opinion of the Attorney General has proposed that until taking the oath a Representative-elect could receive salary for both his congressional position and his other office. 14 Op. Att'y Gen. 408 (1874), cited at 2 USCA §25.

9. For a discussion of the function of credentials in legislative organization, in general, see 1 Hinds' Precedents §631.

10. See Ch. 8, *infra*, for the substantive aspects of credentials as related to elections and election campaigns.

mittal to the House, the process has become more standardized than in former years. Credentials certified by the Member-elect himself,⁽¹¹⁾ or certified by military or de facto governors⁽¹²⁾ or prepared without regard to state law,⁽¹³⁾ have not been received by the House in contemporary practice. In addition, the office of the Clerk requires strict compliance with state law, pursuant to federal statute, before enrolling a Member-elect;⁽¹⁴⁾ disputes have seldom arisen as to the Clerk's action in accepting credentials.⁽¹⁵⁾

11. See 1 Hinds' Precedents §427 (Senate credentials).
12. See 1 Hinds' Precedents §§383, 388.
13. See 1 Hinds' Precedents §605 (credentials showed on face they were not issued according to law); 1 Hinds' Precedents §376 (credentials signed by mere claimant to governorship); 1 Hinds' Precedents §374 (credentials from suspended state government).
14. 2 USC §26 requires credentials which show the Representatives-elect "were regularly elected in accordance with the laws of their states respectively, or the laws of the United States.
15. The most recent debate over the Clerk's action in enrolling a Member-elect occurred on Mar. 9, 1933 (see §3.4, *infra*). See the remarks of Mr. Bertrand H. Snell (N.Y.), on that occasion, opposing the administration of the oath to a Member-elect without credentials, and objecting, post

The term "credentials" actually refers to a very specific document, the certificate of election, certified by the state executive and attesting to the due election of the respective Member-elect.⁽¹⁶⁾ Certificates are transmitted, usually by certified mail, to the Clerk of the House,⁽¹⁷⁾ and may arrive anytime up to the date of the convening of Congress; their failure to arrive before that date will result in the individual's name not appearing on the Clerk's roll.⁽¹⁸⁾ The Clerk

facto, to the Clerk's action in enrolling the Member-elect. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess. Mr. Snell argued that state law, as interpreted by the state supreme court, required the official certificate before the taking of the oath of office. Mr. Snell stated that the Clerks of the House had "always been very particular to see that the certificate which the Clerk accepted before he put the name on the roll was in strict compliance with the law of the state itself" and averred that the Clerk had not exceeded his authority in such a manner for 50 years.

16. See Ch. 8, *infra*, for the elements and form of the certificate, and the issuance thereof by the proper state official.
17. When a paper was received by the House during the call of the roll, addressed to the Speaker, the Clerk presiding declined to open it, although it was supposed to contain a missing credential. 1 Hinds' Precedents §47.
18. Generally, although the House may authorize the taking of seats by

has in the past enrolled a Member-elect whose certificate of election was not yet prepared, when the Governor notified the House that a certificate would be forthcoming.⁽¹⁹⁾

The Clerk is empowered by statute to inquire into the regularity under state law of the credentials when they are delivered.⁽¹⁾ On occasion, the Clerk has enrolled a Member with due credentials on file, although notified of an adverse judicial decision in the state of representation.⁽²⁾

Only one original certificate is transmitted to the Clerk's office (although the Member himself may receive a "ceremonial" copy);

Members-elect whose credentials have not yet arrived, the Clerk may not enroll such Members-elect. See §3.7, *infra*.

19. See §3.4, *infra*. The objection to the Clerk's action by a Member of the House indicated that the Clerk had acted contrary to the prevailing practice. See 73 CONG. REC. 71, 72, 73d Cong. 1st Sess., Mar. 9, 1933.

1. The phrasing of 2 USC §26, requiring credentials showing regular election under state law, contemplates some discretion in reviewing state law. For the Clerk's functions in that respect, see §4, *infra*. In early Congresses, a committee examined the credentials of every Member-elect before authorizing the taking of seats. See 1 Hinds' Precedents §§386–387.

2. See §4.3, *infra*.

the original is retained in the custody of the Clerk's office during and after the period of organization.⁽³⁾ The set of credentials for one Congress is delivered by the Clerk, after a period of four years, to the National Archives, where they are kept as a public record.⁽⁴⁾ (The credentials are filed in the same order in which Members are enrolled, alphabetically by state.)

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize the administration of oath to Members-elect who appear with "substitute" credentials, where the original certificate is delayed.⁽⁵⁾

3. Since credentials are transmitted directly from the state executive to the Clerk of the House, it is a misnomer to describe Members-elect as "bearing" or "presenting" their credentials (see, for example, 1 Hinds' Precedents §30—Member-elect as "bearer"). The Clerk's office will accept, however, credentials which are hand-delivered by the Member-elect because of the immediacy of the convening date of Congress.

4. Since the credentials of the Resident Commissioner from Puerto Rico, unlike the certificates of Members and Delegates, extend for four years (see §5.4, *infra*), the entire set of credentials for one Congress is retained by the Clerk's office until the end of the succeeding Congress.

5. For early instances of such action, see 1 Hinds' Precedents §§162–168.

For example, Members-elect have been sworn on the basis of letters and telegrams from the executive department of the state of representation, attesting as to the due election of the Member-elect and stating that regular credentials would be forthcoming.⁽⁶⁾ Such state executive declarations may state, as a basis for authorizing the administration of the oath, the result of official election returns and may request that such communications constitute official notice of election.⁽⁷⁾ (On many occasions, the House authorizes the administration of the oath where credentials have not yet arrived, pursuant to a statement by another Member-elect that the election in issue is neither contested nor questioned.)⁽⁸⁾

The Clerk may receive during the term of a Congress late credentials and credentials of Members-elect to fill unexpired terms; those certificates are laid before

On some occasions, the House has enrolled claimants where the state executive refused to issue any credentials. See 1 Hinds' Precedents §§ 553-564.

6. See §§ 3.1-3.4, *infra*.
7. See, for example, § 3.2, *infra*.
8. Swearing in Members-elect who do not have credentials but whose elections are unquestioned is authorized by unanimous consent. See § 3.5, *infra*.

the House and then filed by the Clerk with the other certificates for that Congress.⁽⁹⁾ Until the certificate is laid before the House, the respective Representative-elect is not entered on the regular roll of the House.⁽¹⁰⁾

The credentials of Delegates-elect and Resident Commissioners are similarly transmitted to the Clerk and filed with the other documents for the same Congress. The main distinction is that the credentials of those officials do not entitle them to be included on the Clerk's roll; the other distinction is that the credentials for the Resident Commissioner extend for four years as opposed to two.⁽¹¹⁾

Evidence of Certificate; Telegrams

§ 3.1 Not having received their certificates of election, the House authorized the administration of the oath to certain Members-elect pursuant to the receipt of a telegram

9. See § 3.6, *infra*.
10. See § 3.7, *infra*. If Members-elect to fill vacancies appear to take the oath following the intervening death of the Speaker, their credentials are not laid before the House and they are not sworn or enrolled until after a new Speaker's election, in which they are not entitled to participate. See § 5.3, *infra*.
11. See § 3.8, *infra*.

from the state Attorney General and Chairman of the state Board of Canvassers.

On Nov. 15, 1937,⁽¹²⁾ the Clerk of the House submitted to the House a telegram from the Honorable John J. Bennett, Jr., Attorney General of New York and Chairman of the state Board of Canvassers, indicating the election of three Representatives to fill vacancies. The telegram indicated that certificates of election issued by the state Board of Canvassers would be forwarded shortly. The House authorized Speaker William B. Bankhead, of Alabama, to administer the oath to the three Representatives-elect.

§ 3.2 The oath was administered, by unanimous consent, to a Delegate-elect whose certificate of election had not arrived, pursuant to a communication from the territorial governor attesting to the election results and requesting that the communication constitute official notice of election.

On Aug. 4, 1954,⁽¹³⁾ the House authorized the Speaker⁽¹⁴⁾ to ad-

12. 82 CONG. REC. 9, 75th Cong. 2d Sess.

13. 100 CONG. REC. 13282, 83d Cong. 2d Sess.

14. Joseph W. Martin, Jr. (Mass.).

minister the oath of office to Mrs. Elizabeth P. Farrington, Delegate-elect of Hawaii, whose certificate of election had not yet arrived. She was administered the oath pursuant to a letter from the Governor of Hawaii stating the election results and requesting that the communication be accepted as notice of her election pending arrival of the official certificate, due to the desirability of having Hawaii represented in the House during the closing days of the session.

§ 3.3 The House authorized, by unanimous consent, the administration of the oath to a Member-elect, whose certificate of election had not arrived, pursuant to a telegram from the Secretary of State stating that the Member-elect was duly elected according to unofficial returns.

On Oct. 30, 1963,⁽¹⁵⁾ the House authorized the administration of the oath to Mr. Mark Andrews, of North Dakota, pursuant to a telegram from Ben Meier, Secretary of State of North Dakota, stating that according to unofficial returns Mr. Andrews had been elected to complete an unexpired term.

§ 3.4 A Member-elect appearing without credentials has

15. 109 CONG. REC. 20612, 88th Cong. 1st Sess.

been enrolled and sworn where the state executive notified the House that although the Member-elect had been duly elected, the preparation of the certificate was delayed by the technicalities of state law.

On Mar. 9, 1933,⁽¹⁶⁾ the Clerk placed on the roll and the House authorized to be sworn in the Member-elect from Maine, Mr. John G. Utterback, who had appeared without a certificate of election. The Governor of Maine had informed the House that Mr. Utterback was duly elected but that a certificate of election would not be forthcoming until the assembly of the executive council, which was required by state law to act with the Governor in the preparation of the certificate.⁽¹⁷⁾

Oath Administration Absent Credentials

§ 3.5 Where certificates of election have not been received,

16. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

17. See the remarks, in opposing the authorization of the administration of the oath to Mr. Utterback, of Mr. Bertrand H. Snell (N.Y.), who argued that the action of the House set a dangerous precedent and violated both state and federal law. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

the House may by unanimous consent authorize the Speaker to administer the oath to Members-elect whose elections are not contested.

On Nov. 15, 1937,⁽¹⁸⁾ the House authorized Speaker William B. Bankhead, of Alabama, by unanimous consent, to administer the oath to three Representatives-elect for whom certificates of election had not yet been received, and whose elections were not contested.

Similarly, on Oct. 3, 1940,⁽¹⁹⁾ the House authorized, by unanimous consent, Speaker Sam Rayburn, of Texas, to administer the oath of office to Member-elect Florence R. Gibbs, of Georgia, notwithstanding the fact that the certificate of election had not yet been received in the Clerk's office.

Also, on June 20, 1941,⁽²⁰⁾ the oath was administered by unanimous consent to Mr. John H. Foulder, of North Carolina, whose certificate of election had not yet been received.⁽¹⁾

18. 82 CONG. REC. 9, 75th Cong. 2d Sess.

19. 86 CONG. REC. 13117, 76th Cong. 3d Sess.

20. 87 CONG. REC. 5398, 77th Cong. 1st Sess.

1. Similar House action has been taken on numerous occasions. See, for example, 109 CONG. REC. 11233 (June

Credentials to Fill Vacancies

§ 3.6 The Clerk of the House informs the House of the receipt of a certificate of election of a Member-elect, elected to fill an unexpired term, whereupon the new Member is sworn in.

On May 21, 1934,⁽²⁾ Speaker Henry T. Rainey, of Illinois, laid before the House the following communication:

Honorable HENRY T. RAINEY,
Speaker of the House of Representatives, Washington, D.C.

DEAR SIR: The certificate of election of Honorable J.Y. Sanders, Jr., has been received, to fill the unexpired term of Honorable Bolivar E. Kemp, of the sixth district of the State of Louisiana.

Very respectfully,
SOUTH TRIMBLE,

Clerk of the House of Representatives.

Mr. Sanders was then presented to the House and administered the oath of office by the Speaker.

§ 3.7 Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a

20, 1963), 14242 (Aug. 6, 1963), 20612 (Oct. 30, 1963), 88th Cong. 1st Sess.; 111 CONG. REC. 13774 (June 16, 1965), 27171 (Oct. 18, 1965), 89th Cong. 1st Sess.

2. 78 CONG. REC. 9151, 73d Cong. 2d Sess.

quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and after the oath has been administered to them.

On Jan. 10, 1966, the opening day of the second session,⁽³⁾ after the call of the roll to ascertain the presence of a quorum, the certificates of election of Mr. Clarence J. Brown, Jr., of Ohio, and Mr. Thomas M. Rees, of California, both elected to fill vacancies, were laid before the House. The oath was then administered to them by Speaker pro tempore Carl Albert, of Oklahoma, and their names were then included on subsequent roll calls.

Credentials of Delegates and Resident Commissioners

§ 3.8 At the opening of a Congress, the Clerk informs the House of the receipt of the credentials of Delegates and of the Resident Commissioner from Puerto Rico, whose names are not placed on the Clerk's roll.

On Jan. 3, 1973,⁽⁴⁾ immediately after the call of the Clerk's roll to

3. 112 CONG. REC. 6, 89th Cong. 2d Sess.

4. 119 CONG. REC. 12, 93d Cong. 1st Sess.

establish a quorum, the Clerk announced to the House the receipt of the credentials of: Delegate-elect Walter E. Fauntroy, of the District of Columbia, Delegate-elect Antonio Borja Won Pat, of Guam, Delegate-elect Ron De Lugo, of the Virgin Islands, and Resident Commissioner-elect Jamie Benitez, of Puerto Rico. As the names of Delegates and Resident Commissioners are not called to establish a quorum or to vote for Speaker, their names were not included on the Clerk's roll.

Parliamentarian's Note: The credentials of Delegates expire with the term of the House, but the Resident Commissioner's credentials extend for a four-year term.

§ 3.9 The Clerk informs the House of the receipt of the credentials of the new Resident Commissioner of Puerto Rico to fill a vacancy, whereupon the Commissioner is sworn.

On Jan. 3, 1940,⁽⁵⁾ the Clerk of the House, South Trimble, informed the the House of the receipt of a certificate signed by the Governor of Puerto Rico, showing the appointment of Mr. Bolívar Pagán as Resident Commissioner of Puerto Rico, to fill a vacancy.

Mr. Pagán was then administered the oath of office.

5. 86 CONG. REC. 6, 76th Cong. 3d Sess.

§ 3.10 On one occasion the House was informed of the appointment of the Resident Commissioner of the Philippines by the President of the United States.

On Aug. 18, 1944,⁽⁶⁾ Speaker Sam Rayburn, of Texas, laid before the House a communication from the President of the United States, the Honorable Franklin D. Roosevelt, transmitting a communication from the President of the Philippines advising the President of the appointment of Colonel Carlos P. Romulo, as Resident Commissioner of the Philippines.

Parliamentarian's Note: The Philippine Government was sitting in Washington due to Japanese occupation of the Islands.

§ 4. The Clerk's Roll

The Clerk's roll is the list of Members-elect, arranged alphabetically by states, which the Clerk prepares in advance of the convening of a new Congress based on the certificates of election received by his office.⁽⁷⁾ That

6. 90 CONG. REC. 7102, 78th Cong. 2d Sess.

7. See 2 USC §26, directing the preparation of the Clerk's roll. As to the form of credentials and their transmission to the Clerk's office, see §3, supra.