

ceedings, and where there is a variance between a Journal and a Record entry, the Journal is controlling.

On Jan. 8, 11 165,⁽⁹⁾ in response to a parliamentary inquiry of a Senator who asked whether the record of the Journal Clerk or the record of an official reporter of debates took precedence in the event that there was any variance between them, the President pro tempore⁽¹⁰⁾ said that the Journal is mentioned in the Constitution, and all the precedents support the Journal as the proper record.

§ 9. The Journal as Evidence

In keeping with the Journal's status as the official record of the House,⁽¹¹⁾ it is provided by statute⁽¹²⁾ that extracts therefrom certified by the Clerk⁽¹³⁾ are to be received in evidence with the

9. 111 CONG. REC. 452, 89th Cong. 1st Sess.
10. Carl Hayden (Ariz.).
11. See § 8, *supra*.
12. 28 USC § 1736.
13. 2 USC § 114 authorizes the Clerk to charge a nominal fee for certified transcripts from the Journal except when required by an officer of the United States in a matter relating to the duties of his office.

same effect as the originals would have. However, it has been held that with respect to matters not required by the Constitution to be entered on the Journal, such provision is not a statutory declaration that the Journal is the highest evidence of the facts stated in it or complete evidence of all that occurs in the progress of business in the House.⁽¹⁴⁾

Although the Constitution requires the objections of the President to a bill returned by him to be entered upon the Journal,⁽¹⁵⁾ the failure of the Journal to show such objections as of a certain time is not conclusive in determining whether the bill was in fact returned within the period allowed by the Constitution,⁽¹⁶⁾ particularly since the President has no control over the entries in the Journal.⁽¹⁷⁾

14. *Field v Clark*, 143 U.S. 649 (1892), construing former Revised Statutes § 895, the provisions of which respecting the admissibility and weight to be afforded certified copies of the Journal were essentially the same as those of 28 USC § 1736.

Collateral references: As to the extent to which resort may be made to legislative journals as an aid in the construction of constitutions or statutes generally, see 70 ALR 5. As to judicial review of parliamentary proceedings generally, see 59 Am Jur 2d *Parliamentary Law* § 15 (1971).

15. See § 10, *infra*.
16. U.S. Const. art I, § 7.
17. *Prevost v Morganthau*, 106 F2d 330 (70 App. D.C. 306, 1939).

It is expressly provided by statute⁽¹⁸⁾ that certified copies of the Journal record of the oath of office personally subscribed by Members are admissible in evidence in any court of the United States as conclusive proof of the fact that the signer duly took the oath of office in accordance with law.⁽¹⁹⁾

§ 10. Entry of Particular Proceedings

The Constitution provides for the keeping and publication of the Journal,⁽²⁰⁾ and expressly requires the recording of certain matters therein. Pursuant to its provisions, veto messages of the President accompanying bills disapproved and returned by him to the House must be entered on the Journal.⁽¹⁾ The Constitution also specifies the circumstances under which the yeas and nays are to be entered on the Journal.⁽²⁾ And, because yea and nay votes are thus always made a part of the Journal, a motion or request to that effect is not necessary.⁽³⁾

18. 2 USC § 25.

19. Generally, as to taking the oath, see Ch. 2, *supra*.

20. See § 8, *supra*.

1. U.S. Const. art I, § 7.

2. See U.S. Const. art I, §§ 5, 7.

3. See § 10.4, *infra*.

The specific content of the Journal is also governed to some extent by legislative enactment.⁽⁴⁾ For example, a statute requires that the electoral vote be entered on the Journal⁽⁵⁾ together with a list of the votes by state in alphabetical order.

Governing the content of the Journal to a far greater extent than the relatively few constitutional and statutory provisions are the rules and practice of the House itself. In this regard, it should be noted that while the Constitution requires that certain matters be recorded in the Journal, it does not specify the particular mode in which, or indicate with what fullness, the Journal is to record those proceedings of the House relating to matters not expressly required by it to be entered therein; consequently the procedures to be followed with respect to such matters are left to the discretion of the House.⁽⁶⁾ Thus, the House controls its Jour-

4. See, for example, 2 USC § 25, requiring each Member who takes the oath of office to deliver a signed copy thereof to the Clerk for recordation in the *Congressional Record* and in the Journal.

As to the admissibility in evidence of certified copies of the Journal entry, see § 9, *supra*.

5. 3 USC § 17.

6. *Field v Clark*, 143 U.S. 670 (1892).