

ing an act of an election official essential to the validity of an election;⁽⁹⁾ a law requiring the county clerk's seal and initials on absentee ballots;⁽¹⁰⁾ a law requiring voter compliance with absentee voting laws;⁽¹¹⁾ and a law requiring that a ballot be invalidated if the voter's choice could not be ascertained for any reason.⁽¹²⁾

§9. Elections to Fill Vacancies

Article I, section 2, clause 4 of the Constitution provides that upon the creation of a vacancy in

9. Committee on Elections No. 3, report submitted Feb. 15, 1944, 90 CONG. REC. 1675, 78th Cong. 2d Sess.
10. Committee on House Administration, report submitted June 13, 1961, 107 CONG. REC. 10186, 87th Cong. 1st Sess. (adoption of state court opinion).
11. Report submitted Aug. 6, 1958, 104 CONG. REC. 16481, 85th Cong. 2d Sess. (listing nine types of mandatory absentee voting laws). The report concluded that where absentee ballots should be rejected due to improper envelopes and applications, the method of proportionate deduction could be used to equitably deduct votes from the totals of the respective candidates.
12. Report submitted Aug. 6, 1958, 104 CONG. REC. 16481, 85th Cong. 2d Sess. (adoption of state court opinion.)

the House, the executive authority of the state shall issue a writ of election to fill the vacancy. A vacancy in the Senate may be filled either by a writ of election or by state executive appointment under the 17th amendment.⁽¹³⁾

Whether a vacancy arises by death, resignation, declination, or action of the House,⁽¹⁴⁾ the vacancy must be officially declared, either by the state executive or by the House, in order that a special election may be held. Usually state authorities take cognizance of the vacancy without the requirement of notice by the House, and normally the state executive declares the vacancy to exist, particularly in cases of death, declination, or resignation.⁽⁵⁾

If a Member resigns directly to the state Governor, as is the customary practice, the House is thereafter notified and the House need take no action.⁽¹⁶⁾ If he re-

13. For Senate appointments, see §§9.149.16, *infra*.

Proposals to amend the Constitution to allow the appointment of Representatives to fill temporary vacancies have been rejected. See §9.9, *infra*.

14. For the ways in which vacancies may be created, see *House Rules and Manual* §§18–24 (comments to U.S. Const. art. I, §2, clause 4) (1973).
15. See *House Rules and Manual* §§18, 19 (1973).
16. See §9.1, *infra*.

signs directly to the Speaker, the Speaker may be given authority by the House to notify the state Governor of the vacancy.⁽¹⁷⁾ Although a resigning Member may specify that his resignation take effect in the future,⁽¹⁸⁾ there is doubt as to the validity or effectiveness of a resignation which does not specify its effective date.⁽¹⁹⁾

If a Governor does not recognize the existence of a vacancy, such as in the case of a presumed death not susceptible of proof, the House itself may declare the seat vacant, as it does where independent House action creates a vacancy by expulsion or exclusion of a Member.⁽²⁰⁾

Once the vacancy is declared, the state Governor has a mandatory and not merely a directory duty to call for a special election.⁽¹⁾

17. See §9.2, *infra*.

18. See §9.3, *infra*.

19. *Id.*

20. See §9.2, *infra* (Speaker notifies state of vacancy) and §9.5, *infra* (presumed death, House declaration of vacancy).

1. See *Jackson v Ogilvie*, 426 F2d 1333 (7th Cir. 1970), cert. denied, 400 U.S. 833; *In re Congressional Election*, 15 R.I. 624, 9 A.224 (1887); *In re the Representation Vacancy*, 15 R.I. 621, 9 A.222 (1887). *Contra*, *People ex rel. Fitzgerald v Voorhis*, 222

The time, place, and manner of special elections are regulated in much the same way as in general elections; in the absence of federal regulation, state law governs the proceedings.⁽²⁾ And Congress is the sole judge of the elections and returns of Members-elect to fill vacancies, whose certificates must be transmitted to the House and must show the Member-elect regularly elected in accordance with federal and state law.⁽³⁾

Although the time for general elections is regulated by federal statute,⁽⁴⁾ the states appoint the time of special elections to fill vacancies.⁽⁵⁾ The state in holding a special election must comply with constitutional and statutory requirements applicable to all federal elections, such as those mandating full voting rights and properly drawn congressional districts.⁽⁶⁾

N. Y. 494 119 N.E. 106 (1918) (state court, would not interfere with executive discretion to call special election).

2. See §9.7, *infra*.

3. For materials on Congress as judge of elections to fill vacancies, see §§9.7, 9.8, *infra*. For the certificates of election of Members-elect to fill vacancies, see §§9.11–9.13, *infra*.

4. See 2 USC §7.

5. See 2 USC §8.

6. For protection of voting rights, see §6, *supra*. For districting requirements, see §§3, 4, *supra*.

Notification of Vacancy**§ 9.1 Under normal practice, Members notify the Speaker by letter of their resignation after first submitting their resignations to the Governor of their state.**

On Sept. 12, 1968,⁽⁷⁾ the Speaker⁽⁸⁾ laid before the House a communication from Mr. Charles Goodell, of New York, which read as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C.,
September 11, 1968.

Hon. JOHN W. McCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

In cases where congressional district lines were redrawn after the general election but before a special election, the decisions have been in conflict as to whether the special election should be held in the old district or the newly drawn district. See *People ex rel. Fitzgerald v Voorhis*, 222 N.Y. 494, 119 N.E. 106 (1918) (election to be held in new district rather than district at time of original election); *contra, Sloan v Donoghue*, 20 Cal. 2d 607, 127 P.2d 607, 127 P.2d 922 (1942). See also 1 Hinds' Precedents §§ 311, 312, 327.

7. 114 CONG. REC. 26541, 90th Cong. 2d Sess. For further illustrations see 108 CONG. REC. 7, 87th Cong. 2d Sess., Jan. 10, 1962; and 89 CONG. REC. 7779, 78th Cong. 1st Sess., Sept. 23, 1943.
8. John W. McCormack (Mass.).

DEAR MR. SPEAKER: I have today submitted my resignation as United States Representative from the 38th District of the State of New York to the Governor of New York. This resignation is effective at the close of business on September 9, 1968.

The years I have spent in the House of Representatives have been memorable ones. I will not soon forget the many wonderful friendships I made during these years. The opportunity to serve with you and the many outstanding members of the House of Representatives has been most rewarding.

I look forward to working with you and your colleagues in another capacity as we continue to pursue constructive and positive solutions to the critical problems of the times.

With warm personal regards, I am,

Very truly yours,

CHARLES E. GOODELL.

§ 9.2 Where a Member resigns by direct communication to the Speaker only, the House authorizes the Speaker to notify the Governor of the State in order to effectuate the resignation and create a vacancy.⁽⁹⁾

On July 12, 1957, after a Member from Pennsylvania had re-

9. Where the House itself creates a vacancy, as by its ruling in an election case or otherwise, the Speaker is directed to notify the state executive of the vacancy (see §§ 9.5, 9.7, *infra*). But a Member's resignation is only effective when transmitted to the Governor, and not to the House.

signed directly to the House,⁽¹⁰⁾ Speaker Sam Rayburn, of Texas, was authorized by the House (by unanimous consent) to notify the Governor of Pennsylvania of the vacancy as follows:

His Excellency GEORGE M. LEADER,
Governor of Pennsylvania,
Harrisburg, Pa.

SIR: Honorable Samuel K. McConnell, Jr. on Friday July 12, 1957, submitted his resignation as a Representative in the Congress of the United States from the Thirteenth District of Pennsylvania, effective September 1, 1957, and pursuant to the order of the House of Representatives on Friday, July 12, 1957, I have been directed to so inform you.

Very truly yours,
SAM RAYBURN.

Resignations Effective in the Future

§ 9.3 Resigning Members have on occasion made their resignations effective on a future date and on one occasion the effective date followed the anticipated date of a special election to fill the vacancy which would be cre-

10. 103 CONG. REC. 11536, 85th Cong. 1st Sess. See also 75 CONG. REC. 2969, 72d Cong. 1st Sess., Jan. 29, 1932; 90 CONG. REC. 8450, 78th Cong. 2d Sess., Nov. 27, 1944; 106 CONG. REC. 16535, 86th Cong. 2d Sess., Aug. 16, 1960 (during adjournment, previous authority granted).

ated; but a resignation to become effective when a special election may be held or a successor elected, without specifying an effective date certain, is invalid and does not create a vacancy.

On Oct. 2, 1963,⁽¹¹⁾ W. Homer Thornberry notified Speaker John W. McCormack, of Massachusetts, of his resignation as a Representative from Texas, the resignation to become effective Dec. 20, 1963. Mr. Thornberry delayed the effective date of his resignation because of the press of business in the House and because a special election, for another purpose, had previously been scheduled for Dec. 9 in Texas; that date was therefore considered an opportune time to conduct a special election for Mr. Thornberry's seat. James J. Pickle, of Texas, was elected to fill the seat in the Dec. 9 special election and took the oath as a Member on Dec. 21, 1963.

On Dec. 1, 1944,⁽¹²⁾ in the 78th Congress, second session, Dave E. Satterfield notified Speaker Sam Rayburn, of Texas, of his resignation as a Representative from Virginia, "to become effective as soon as my successor can be elected."

11. 109 CONG. REC. 18583, 88th Cong. 1st Sess.

12. 90 CONG. REC. 8689, 78th Cong. 2d Sess.

Mr. Satterfield had already been re-elected in November to a House seat in the 79th Congress. No special election was called in Virginia and Mr. Satterfield took his seat as a Representative from Virginia to the 79th Congress. On Jan. 29, 1945, Mr. Satterfield resigned from the House, effective on Feb. 15, 1945.

On Jan. 18, 1965 (see §9.4, *infra*), Albert W. Watson notified Speaker John W. McCormack, of Massachusetts, of his resignation as a Representative from South Carolina, to be effective "upon such date as the Governor may set for a special election to fill the vacancy." The Governor of South Carolina declined to take any action on the conditional resignation and no special election was called. On Jan. 28, 1965, Mr. Watson notified the Speaker of his resignation as a Representative to take effect immediately.

On Sept. 26, 1956,⁽¹³⁾ Senator Marion Price Daniel (who had begun his six-year term in 1953) resigned his seat in the Senate from the State of Texas, to become effective Jan. 15, 1957, "or at such earlier date as my successor has been elected and qualified." Sen-

13. 103 CONG. REC. 3, 85th Cong. 1st Sess., Jan. 3, 1957 (letter of resignation laid before the Senate at convening of 85th Congress).

ator Daniel's letter of resignation to the Governor of Texas stated that "although the date of the election . . . is a matter within your discretion, please permit me to express the hope that it will be held in time for my successor to take office not later than January 3." The Governor of Texas did not call a special election, since no vacancy could be created by the qualified resignation until Jan. 15, 1957, in the 85th Congress first session. Senator William A. Blakley was appointed to fill the vacancy created on Jan. 15 and took his seat in the Senate on Jan. 17.

Parliamentarian's Note: For a discussion in the Senate in the 58th Congress on the impropriety of a resignation to take effect on a future unspecified date, see 2 Hinds' Precedents §1229. The view was expressed on that occasion (involving a contested election case) that any resignation to take effect in the future, whether or not an effective date was specified, only constituted notice of the intention to resign, since the resigning Member could withdraw his resignation before it took effect. See, for example, the resignation of a Member to take effect on a future specified date cited at 6 Cannon's Precedents §231; the Member withdrew his resignation

after it had been received by the State Governor but before its effective date.

The precedents of the House have established that a resignation may be made effective on a future date (see 2 Hinds' Precedents §§1220–1227), but as the precedents above indicate, a resignation which does not specify a date certain on which it becomes effective is invalid and does not create a vacancy. And in view of the possibility of the withdrawal of a resignation which is not yet effective, a special election to fill the seat should be withheld until the effective date of the resignation.

State Duty to Call Special Election

§ 9.4 Where a Member resigned, his resignation to be effective on the date of an election to fill the vacancy, and the Governor failed to call a special election, the Member immediately resigned from the House.

On Jan. 18, 1965,⁽¹⁴⁾ Speaker John W. McCormack, of Massachusetts, laid before the House a letter from Mr. Albert W. Watson, of South Carolina, advising the

14. 111 CONG. REC. 805, 806, 89th Cong. 1st Sess.

Speaker of his resignation to the Governor of his state, such resignation to be effective upon such date as the governor may set for a special election to fill the vacancy.

On Jan. 28, 1965,⁽¹⁵⁾ the Speaker laid before the House a communication from Mr. Watson stating that it appeared that the Governor of South Carolina intended to take no affirmative action on his provisional resignation or to call a special election to fill the vacancy that would be created. Mr. Watson therefore immediately resigned his seat as a Representative, to the Governor with notice to the Speaker.⁽¹⁶⁾

§ 9.5 Where a Member-elect disappeared between the issuance of his certificate of election and the convening of the Congress, and the Governor took no action, the House declared the seat va-

15. 111 CONG. REC. 1452, 89th Cong. 1st Sess.

16. When a vacancy in a congressional seat is created, the state Governor has an affirmative duty under U.S. Const. art. I, §2, clause 4 to call a special election to fill the vacancy. See *Jackson v Ogilvie*, 426 F2d 1333 (7th Cir. 1970), cert. denied, 400 U.S. 833.

Under 2 USC §8, the state legislature may prescribe the time for a special election to fill a congressional vacancy.

cant and notified the Governor thereof.

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, N.J. Begich, of Alaska, and Hale Boggs, of Louisiana.⁽¹⁷⁾ 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 verdict and a certificate of presumptive death.

As to the other Member-elect, Mr. Boggs, 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 House Resolution 1, declaring the seat of Mr. Boggs to be vacant and notifying the Governor of Louisiana of the existence of the vacancy.⁽¹⁸⁾

§ 9.6 After a vacancy was created by the death of a Rep-

17. 119 CONG. REC. 15, 16, 93d Cong. 1st Sess.

18. *Id.*

representative, the state Governor proclaimed the winner of the special primary election to be duly elected to the House without holding a general election, since the primary winner was the only qualified candidate for the general election.

On Oct. 18, 1965,⁽¹⁹⁾ Mr. Edwin W. Edwards took the oath of office to fill a vacancy from the State of Louisiana. On Oct. 15, 1965, the Governor of Louisiana had proclaimed Mr. Edwards duly elected to the House of Representatives, without holding a general election, since Mr. Edwards had won the special Democratic primary election and no other candidates had qualified to stand for office in the general election to fill the vacancy.

Application of State Law as to Special Elections

§ 9.7 Congress in judging the elections of Members to fill vacancies follows state law regulating the time and procedure for such elections, in the absence of federal regulation.⁽²⁰⁾

19. 111 CONG. REC. 27171, 89th Cong. 1st Sess.

20. See U.S. Const. art. I, §4, clause 1 and 2 USC §8.

On Jan. 20, 1934, a Committee on Elections submitted House Resolution 231 and House Report No. 334, declaring null and void an election to fill a vacancy and denying the seat to either of the two contestants, one with a certificate of election from the Governor and one with a certificate of election from a citizens' committee.⁽¹⁾

The committee (see H. Rept. No. 334) had determined, after examining the relevant state law, that: The election to fill the vacancy, held pursuant to the governor's proclamation, was invalid because held prior to expiration of the period required by state law to precede the election; and although the election was invalid, a party committee could not itself nominate a candidate and hold an election to choose him as a Representative.⁽²⁾ The House adopted the resolution declaring the election null and void:

Resolved, That there was no valid election for Representative in the

1. 78 CONG. REC. 1035, 73d Cong. 2d Sess. On Jan. 3, 1934, the House had denied the right to be sworn to either contestant and had referred the matter to the Elections Committee. 78 CONG. REC. 11, 12, 73d Cong. 2d Sess.
2. See 78 CONG. REC. 1108-11, 73d Cong. 2d Sess., Jan. 22, 1934 and 78 CONG. REC. 1510-21, 73d Cong. 2d Sess., Jan. 29, 1934.

House of Representatives of the Seventy-third Congress from the Sixth Congressional District of the State of Louisiana on the 5th day of December, or the 27th day of December 1933, and that neither Mrs. Bolivar E. Kemp nor J. Y. Sanders, Jr., is entitled to a seat therein; and be it further

Resolved, That the Speaker communicate to the Governor of the State of Louisiana that there is a vacancy in the representation of that State in the Sixth Congressional District thereof.⁽³⁾

§ 9.8 Where a state court issued a preliminary injunction against the issuance of a certificate to a Member-elect to fill a vacancy and the Speaker declined to administer him the oath, without the certificate and without unanimous consent of the House, the House authorized that he be sworn and referred to committee the question as to his final right to a seat.

On May 24, 1972, the House authorized the Speaker to administer the oath to Member-elect William S. Conover II, to fill a vacancy in a congressional seat from Pennsylvania.⁽⁴⁾ House Resolution 986, authorizing the administration of the oath, provided that Mr.

3. 78 CONG. REC. 1521, 73d Cong. 2d Sess., Jan. 29, 1934.
4. H. Res. 986, 118 CONG. REC. 18654, 92d Cong. 2d Sess.

Conover's final right to a seat be referred to the Committee on House Administration, since a citizens' group had obtained a state court preliminary injunction prohibiting the state Governor from issuing a certificate of election to Mr. Conover:

Whereas the Honorable James G. Fulton, Representative from the Twenty-seventh District of Pennsylvania, died on the 5th day of October 1971;

Whereas Governor Milton Shapp, duly elected Governor of the Commonwealth of Pennsylvania, ordered a special election for the purpose of filling the seat vacated by the death of the Honorable James G. Fulton;

Whereas said special election was held on the 25th day of April 1972;

Whereas the laws of Pennsylvania provide that any candidate may challenge the results of said election within twenty days of the election;

Whereas twenty days have expired and neither Douglas Walgren, Democratic candidate in that special election, nor Willard Holt, Constitution candidate in said special election, have filed suit in any court challenging said election;

Whereas the Bureau of Elections, Allegheny County, has forwarded the official certified vote to the Secretary of the Commonwealth of Pennsylvania, according to the laws of the Commonwealth of Pennsylvania, showing that William S. Conover II received twenty-eight thousand six hundred and forty-seven votes; Douglas Walgren received twenty-five thousand nine hundred and fifty-six votes; and Willard Holt received one thousand five hundred and seventeen votes;

Whereas a citizens' group has instituted a suit against Milton Shapp, Governor of the Commonwealth of Pennsylvania, and C. Delores Tucker, Secretary of the Commonwealth of Pennsylvania, and did on May 11, 1972, obtain in the Commonwealth Court of Pennsylvania a preliminary injunction restraining Milton Shapp, Governor of the Commonwealth of Pennsylvania, from issuing a certificate of election based on the aforementioned results of the special election held April 25, 1972;

Whereas legal proceedings emanating from this suit may result in protracted litigation thereby depriving the Twenty-seventh Congressional District of Pennsylvania of representation in the House of Representatives for an indefinite period; and

Whereas under article I, section 5 of the Constitution of the United States the House of Representatives is the judge of the elections, returns and qualifications of its own Members: Therefore be it

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Pennsylvania, Mr. William S. Conover II; and be it further

Resolved, That the question of the final right of William S. Conover II to a seat in the Ninety-second Congress be referred to the Committee on House Administration, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution.

Parliamentarian's Note: Mr. Conover had originally appeared to take the oath of office shortly

after the special election to fill the vacancy was held on Apr. 25, 1972, but Speaker Carl Albert, of Oklahoma, declined to administer the oath due to the preliminary injunction and the likelihood of an objection being raised to Mr. Conover's taking the oath without a certificate of election.

Proposals to Fill Vacancies by Appointment

§ 9.9 Proposals to amend the Constitution to provide for filling vacancies in the House by appointment have been rejected.⁽⁵⁾

Re-election of Representative to Succeed Himself

§ 9.10 A Member who resigns or who is excluded from the House may be re-elected in a special election to succeed himself in the same Congress.

On Nov. 20, 1944,⁽⁶⁾ Mr. James Domengeaux appeared to take the oath of office. He was elected to fill a vacancy created when he had resigned his congressional

seat from the State of Louisiana in the same Congress.

Parliamentarian's Note: Mr. Domengeaux resigned to enter the armed forces and after approximately 90 days was discharged because of physical disability.

On May 1, 1967,⁽⁷⁾ Speaker John W. McCormack, of Massachusetts, laid before the House a letter from the Clerk, advising receipt of a certificate showing the special election of Mr. Adam C. Powell, of New York, to fill a vacancy created when the House, on Mar. 1, 1967, adopted a resolution excluding Mr. Powell from membership and declaring his seat vacant. In response to a parliamentary inquiry, the Speaker indicated that if Mr. Powell appeared to take the oath and was again challenged, the House would have to determine, at that time, what action it should take.

On June 16, 1965,⁽⁸⁾ Mr. Albert W. Watson, of South Carolina, elected in a special election to fill the vacancy created when he himself resigned from the House, was administered the oath of office. He had originally been elected as a Democrat, resigned from the House, and was re-elected to the House as a Republican.⁽⁹⁾

5. See, e.g., 106 CONG. REC. 1715, 1747, 1748, 86th Cong. 2d Sess., Feb. 2, 1960 (S.J. Res. 39).

6. 90 CONG. REC. 8201, 78th Cong. 2d Sess.

7. 113 CONG. REC. 11298, 90th Cong. 1st Sess.

8. 111 CONG. REC. 13774, 89th Cong. 1st Sess.

9. See also §7.5, *supra*, where a Senator elected by a "write-in" vote re-

Certificate of Election to Fill Vacancy

§ 9.11 The Clerk notifies the Speaker when he receives certificates of elections to fill vacancies in the House.

On Jan. 3, 1956,⁽¹⁰⁾ the Speaker laid before the House a communication from the Clerk stating as follows:

A certificate of election in due form of law for the Honorable John D. Dingell as a Representative-elect to the Eighty-fourth Congress from the Fifteenth Congressional District of the State of Michigan, to fill the vacancy caused by the death of his father, the late Honorable John D. Dingell, has been received from the secretary of state of Michigan, and is on file in this office.

§ 9.12 Members-elect to fill vacancies may be sworn by

signed to permit a regular primary election and announced his candidacy therein.

10. 102 CONG. REC. 5, 84th Cong. 2d Sess. See also 104 CONG. REC. 5, 85th Cong. 2d Sess., Jan. 7, 1958; 112 CONG. REC. 6, 89th Cong. 2d Sess., Jan. 10, 1966 (certificates for Members to fill vacancies are not laid before the House until after the roll call, on the convening day of the second session); 114 CONG. REC. 25508, 90th Cong. 2d Sess., Sept. 4, 1968; 115 CONG. REC. 26056, 26057, 91st Cong. 1st Sess., Sept. 18, 1969 (Governor of state, having named appointee to fill vacancy, appeared on Senate floor to witness taking of oath by appointee).

unanimous consent where their certificates of elections have not arrived and their elections are not contested.⁽¹¹⁾

§ 9.13 A Member-elect elected to fill a vacancy was sworn in, although his certificate was objected to on the ground that it stated he was "duly elected as Congressman," instead of "Representative in Congress."⁽¹²⁾

On June 2, 1930,⁽¹³⁾ Mr. Robert H. Clancy, of Michigan, arose to object to the validity of the certificate of election of Thomas L.

11. 115 CONG. REC. 28487, 91st Cong. 1st Sess., Oct. 3, 1969 (sworn in as Member prior to vote on military procurement authorization for 1970); 111 CONG. REC. 27171, 89th Cong. 1st Sess., Oct. 18, 1965 (only candidate for the vacancy); 111 CONG. REC. 13774, 89th Cong. 1st Sess., June 16, 1965 (re-election of Member who resigned); 100 CONG. REC. 13282, 83d Cong. 2d Sess., Aug. 4, 1954 (Delegate-elect); 90 CONG. REC. 8194, 78th Cong. 2d Sess., Nov. 16, 1944.
12. Although no special form for the certificate of a Representative-elect is required by federal law, the certificate of a Member-elect to fill a vacancy should identify the vacancy and term he is filling. See, in general, § 15, *infra*.
13. 72 CONG. REC. 9891, 9892, 71st Cong. 2d Sess.

Blanton, Member-elect from Texas, to fill a vacancy. Mr. Clancy's objection was based on the description in the credentials of Mr. Blanton as "Congressman," instead of as "Representative in Congress."

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

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

Appointees to Fill Vacancies in Senate

§ 9.14 An appointee to fill a vacancy in the Senate declined to serve, whereupon his certificate of appointment was

returned to the state Governor.

On June 21, 1956,⁽¹⁴⁾ there was laid before the Senate two communications from Governor Chandler of Kentucky, one appointing Senator-elect Joseph Leary to fill a vacancy, and one asking the return of the certificate of appointment, since Mr. Leary had declined to serve. The Senate ordered the return of the certificate:

Ordered, That in view of the declination of Joseph J. Leary of the appointment by the Governor of Kentucky as Senator from that State to fill the vacancy caused by the death of the late Senator Alben W. Barkley, the certificate of appointment of Mr. Leary be returned by the Secretary of the Senate to the Governor, in compliance with his request.

§ 9.15 Where a candidate was simultaneously elected as a Senator and as Vice President, he was administered the oath as Senator and then immediately resigned from the Senate; this resignation was followed by the administration of the oath to an appointee to fill the vacancy that had been created.

On Jan. 3, 1961,⁽¹⁵⁾ Senator-elect Lyndon B. Johnson, of

14. 102 CONG. REC. 10769, 84th Cong. 2d Sess.

15. 107 CONG. REC. 6, 7, 87th Cong. 1st Sess.

Texas, was administered the oath, after which he submitted his resignation from the Senate due to his election as Vice President of the United States.

Following his resignation, there were laid before the Senate a letter and telegram from the Governor of Texas appointing Mr. William A. Blakley to fill the vacancy created by Mr. Johnson's resignation. After the receipt of the communications, Mr. Blakley, who was present, was administered the oath.

§ 9.16 The Speaker laid before the House a letter of resignation from a Member who had been appointed to the Senate to fill the vacancy caused by the resignation of a Senator

whose term of office was about to expire.

On Dec. 31, 1970, the Speaker laid before the House the resignation of Mr. William V. Roth, Jr., of Delaware. Mr. Roth had been appointed by the Governor to fill a vacant senatorial seat and was administered the oath in the Senate on Jan. 2, 1971, although the term of office for the seat was to expire a day later on Jan. 3, 1971.⁽¹⁶⁾

Parliamentarian's Note: Mr. Roth had been elected as a Senator from Delaware, his term to begin Jan. 3, 1971; the appointment to fill the vacancy in the 91st Congress had the effect of increasing his seniority in the 92d Congress.

C. CAMPAIGN PRACTICES

§ 10. Regulation and Enforcement

The U.S. Constitution grants each House of Congress the power, under article I, section 5, to judge the elections and returns of its own Members. It also grants to Congress, under article I, sec-

tion 4, the power to make or alter regulations for the time, place, and manner of holding elections.⁽¹⁷⁾

The Supreme Court has affirmed that the power of Congress to make regulations for holding elections extends to every phase of the election process, including campaign practices:

^{16.} 116 CONG. REC. 44516, 91st Cong. 2d Sess.

^{17.} For the constitutional provisions and comments thereon, see *House Rules and Manual* §§ 42-44, 46-51 (1973).