

## **CREDENTIALS AND OATH OF OFFICE**

Under Rule II, the presentation and consideration of the credentials of Senators-elect and Senators appointed to fill vacancies which occurred by death or resignation are highly privileged business and "shall be proceeded with until disposed of."

At the opening of a new Congress, immediately following the prayer, the announcement of any deaths, and resignations of Senators since the last session, and the presentation of any letters relating thereto, as well as the credentials of Senators appointed to fill any vacancies; the credentials of Senators-elect for six-year terms are laid before the Senate en bloc. The Senate then proceeds to the administration of the oath of office to the said appointed, if any, and elected Senators.

The Senate has adopted forms of suggested certificates for mailing out to Governors of States concerned for their use in filing credentials of Senators-elect, or designate, with the Senate, which are as follows: "Certificate of Election for Six-Year Term," "Certificate of Election for Unexpired Term," and "Certificate of Appointment," which are set forth below.

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### **Rule II, Paragraphs 1 and 2**

#### **[Credentials of Senators and Consideration of]**

1. The presentation of the credentials of Senators-elect or of Senators designate and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is voting or ascertaining the presence of a quorum; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of.

2. The Secretary shall keep a record of the certificates of election and certificates of appointment of Senators by entering in a well-bound book kept for that purpose the date of the election or appointment, the name of the person elected or appointed, the date of the certificate, the name of the governor and the secretary of state signing and counter-signing the same, and the State from which such Senator is elected or appointed.

## Credentials

### Credentials Dealt With by the Congress to Which Elected:

It is not the practice of the Senate to consider questions arising upon the credentials of a Senator-elect for a term commencing in a succeeding Congress; <sup>1</sup> likewise, it is not the policy of the Senate in the closing session of one Congress, to consider in advance the right or claim of a person to a seat in the Senate for a term commencing in the succeeding Congress.<sup>2</sup>

The certificates of election of William S. Vare and Frank L. Smith as Senators-elect from the States of Pennsylvania and Illinois, respectively, for the terms beginning March 4, 1927, having been referred to a committee, that committee on the last day of the 69th Congress, reported that it had found the certificates regular on their face, but the committee expressed the belief that the Senate of the 70th Congress, and not the 69th Congress, should deal with the question raised as to their right to be seated as Members of the Senate.<sup>3</sup>

### Credentials Submitted Before Vacancy Existed:

On one occasion, the resignation of a Senator to take effect at a future date having been received, the Senate recognized the validity of the action of the legislature of the State in filling the vacancy by election prior to the effective date of the resignation.<sup>4</sup> Alfred Evan Reams of Oregon was appointed on January 29 to be effective on February 1, 1938, to replace Senator Frederick Steiwer, who submitted his resignation to the Governor on January 28, to be effective January 31, 1938.<sup>5</sup> Again in 1952, Thomas H. Kuchel of California was appointed on December 22, to be effective as of January 2, 1953, to replace Senator Richard Nixon, who submitted his resignation to the Governor on November 8, 1952.<sup>6</sup>

<sup>1</sup> Dec. 30, 1890, and Jan. 5, 1891, 51-2, *Record*, pp. 863, 906.

<sup>2</sup> See Mar. 1, 1887, 49-2, *Record*, pp. 2461, 2474.

<sup>3</sup> Mar. 4, 1927, 69-2, *Record*, p. 5914.

<sup>4</sup> Feb. 21, 1905, 58-3, *Record*, p. 2971.

<sup>5</sup> *Senate Journal*, 75-3, pp. 117-18.

<sup>6</sup> *Senate Journal*, 83-1, p. 3, *Record*, 83-1, p. 3.

**Forms of Certificates:**

In 1934 and 1961 the Senate adopted resolutions recommending to the States the form of certificates of election and appointment of a Senator,<sup>7</sup> now paragraph 3 of Rule II, as follows:

"CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

*"To the President of the Senate of the United States:*

"This is to certify that on the \_\_\_ day of \_\_\_, 19\_\_\_, A \_\_\_\_\_ B \_\_\_\_\_ was duly chosen by the qualified electors of the State of \_\_\_\_\_ a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3d day of January, 19\_\_\_.

"Witness: His excellency our governor \_\_\_\_\_, and our seal hereto affixed at \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, in the year of our Lord 19\_\_\_.

"By the governor:

"C \_\_\_\_\_ D \_\_\_\_\_,  
"Governor.

"E \_\_\_\_\_ F \_\_\_\_\_,  
"Secretary of State."

"CERTIFICATE OF ELECTION FOR UNEXPIRED TERM

*"To the President of the Senate of the United States:*

"This is to certify that on the \_\_\_ day of \_\_\_, 19\_\_\_, A \_\_\_\_\_ B \_\_\_\_\_ was duly chosen by the qualified electors of the State of \_\_\_\_\_ a Senator for the unexpired term ending at noon on the 3d day of January, 19\_\_\_, to fill the vacancy in the representation from said State in the Senate of the United States caused by the \_\_\_\_\_ of C \_\_\_\_\_ D \_\_\_\_\_.

"Witness: His excellency our governor \_\_\_\_\_, and our seal hereto affixed at \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, in the year of our Lord 19\_\_\_.

"By the governor:

"E \_\_\_\_\_ F \_\_\_\_\_,  
"Governor.

"G \_\_\_\_\_ H \_\_\_\_\_,  
"Secretary of State."

"CERTIFICATE OF APPOINTMENT

*"To the President of the Senate of the United States:*

"This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of \_\_\_\_\_, I, A \_\_\_\_\_ B \_\_\_\_\_, the governor of said State, do hereby appoint C \_\_\_\_\_ D \_\_\_\_\_, a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the \_\_\_\_\_ of E \_\_\_\_\_ F \_\_\_\_\_, is filled by election as provided by law.

<sup>7</sup> In 1897 and in 1934 the Senate adopted such resolutions for the certificate of election. See Feb. 23, 1897, 54-2, *Record*, p. 2123.

"Witness: His excellency our governor \_\_\_\_\_, and our seal hereto affixed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord 19\_\_\_\_.

"By the governor:

"G \_\_\_\_\_ H \_\_\_\_\_,  
"Governor.

"I \_\_\_\_\_ J \_\_\_\_\_,  
"Secretary of State." <sup>8</sup>

The credentials of a Senator-elect must, under the law, be signed by the executive of the State and attested by the Secretary of State.<sup>9</sup>

### Irregularities in Certificates Waived:

In 1910, an irregularity in the form of the certificate of appointment of a Senator to fill a vacancy caused by a resignation was waived by the Senate where the material facts were set forth therein, and the oath was administered to the appointee.<sup>10</sup>

In another case, the credentials of a Senator appointed to fill a vacancy in the Senate until his successor had been duly elected were challenged as not being in proper form—the Governor not being empowered to fix the tenure of office—but the fact of the appointment having been established, the language as to tenure was regarded as surplusage, and the oath was administered to the appointee.<sup>11</sup> This precedent was again accepted as a rule of law in the following year when the credentials of an appointee to fill a vacancy in the Senate until the next meeting of the legislature and until his successor had been elected and qualified were questioned as not being in proper form, in that the Governor was not empowered under the Constitution to appoint until his successor was elected.<sup>12</sup>

The certificate of election of a Senator from the State of Texas during a session of the Senate having incorrectly stated the date of the beginning of his term of service, the

<sup>8</sup> *Resolved*, That the Secretary of the Senate shall send copies of these suggested forms and these resolutions to the executive and secretary of each State wherein an election is about to take place or an appointment is to be made in season that they may use such forms if they see fit. (*S. Journal* 17, 73-2, Jan. 4, 1934; *S. Journal* 547, 87-1, July 17, 1961.)

<sup>9</sup> Feb. 4, 1885, 48-2, *Record*, p. 1244.

<sup>10</sup> Feb. 1, 1910, 61-2, *Record*, pp. 1319-20.

<sup>11</sup> Dec. 21, 1905, 59-1, *Record*, p. 667.

<sup>12</sup> June 13, 1906, 59-1, *Record*, p. 8453.

Senate adopted a resolution correcting the error and giving the correct date.<sup>13</sup>

### **Placed on File:**

When credentials are received prior to the beginning of the Congress to which the Senator was elected, it is the custom to place them on file and not refer them, awaiting the next Congress for their disposition.<sup>14</sup>

### **Resignation of Senators Appointed or Elected:**

See "Resignation of Senators," p. 1251.

### **Withdrawn:**

In 1913, the credentials of Hon. Henry D. Clayton, appointed by the Governor to be a Senator from Alabama, having been presented to the Senate and the appointee having been subsequently declined to accept the appointment, the credentials were withdrawn by unanimous consent.<sup>15</sup>

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## **Oath of Office**

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter: So help you God. (From printed card used by President of the Senate.)

The oath of office shall be administered by the President of the Senate to each Senator who shall be elected, previous to his taking his seat. (2 U.S.C. 21.)

The presiding officer, for the time being, of the Senate of the United States, shall have power to administer all oaths and affirmations that are or may be required by the Constitution, or by law, to be taken by any Senator, officer of the Senate, witness, or other person, in respect to any matter within the jurisdiction of the Senate. (2 U.S.C. 23.)

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<sup>13</sup> Apr. 29, 1957, 85-1, *Record*, pp. 6059-60; see also case of Senator Tower of Texas (June 15, 1961, and July 17, 1961, 87-1, *Record*, pp. 10522, 12309, 12650).

<sup>14</sup> Mar. 3, 1897, 54-2, *Record*, p. 2728; Jan. 28, 1901, 56-2, *Record*, p. 1558.

<sup>15</sup> Aug. 20 and Oct. 21, 1913, 63-1, *Record*, pp. 3553-54, 5709.

### Administered in Open Session:

The subscription to the oath of office must be made by Senators in open session.<sup>16</sup>

With the consent of the Senate, the administration of the oath of office may be elsewhere, even at the home of the Senator who is there because of illness.<sup>17</sup> For example, the oath of office was administered, pursuant to resolutions adopted in each instance by the Senate, to Senator-elect Walter F. Mondale at the Bethesda Naval Hospital,<sup>18</sup> and to Senator-elect Joseph R. Biden, Jr., in Wilmington, Delaware.<sup>19</sup>

<sup>16</sup> Mar. 4, 1925, 69-Special Session, *Record*, p. 7; Mar. 5, 1925, 69-Special Session, *Record*, pp. 8, 9.

<sup>17</sup> May 3, 1929, 71-1, *Journal*, p. 48; May 6, 1929, 71-1, *Journal*, p. 49; Jan. 7, 1943, 78-1, *Journal*, p. 2, *Record*, p. 31 and Jan. 11, 1943, 78-1, *Record*, p. 70.

<sup>18</sup> Jan. 10, 1967, 90-1, *Journal*, p. 3; Jan. 12, 1967, 90-1, *Journal*, p. 24.

<sup>19</sup> Jan. 3, 1973, 93-1, *Record* (daily), p. 7; Jan. 6, 1973, 93-1, *Record* (daily), p. 271. The form of the resolution (S. Res. 8) utilized follows:

Whereas Joseph R. Biden, Jr., a Senator-elect from the State of Delaware, is temporarily unable, by reason of tragedy in his family, to appear in person to take the oath required by law as a Member of the Senate; and

Whereas there is no consent or question as to his election: Now therefore be it Resolved, That the Secretary of the Senate be, and he is hereby, authorized to administer the oath of office to the said Joseph R. Biden, Jr., and that the said oath, when administered as herein authorized, shall be accepted and received by the Senate as the oath of office of the said Joseph R. Biden, Jr.

The following transpired in open session when the Secretary of the Senate reported back to the Senate regarding the administration of the oath:

"The ACTING PRESIDENT pro tempore. The Secretary of the Senate has a report to submit to the Senate pursuant to Senate Resolution 8, which he will now make.

"The Secretary of the Senate (Mr. Francis R. Valeo). Mr. President, having been authorized by the Senate, in accordance with the provisions of Senate Resolution 8, agreed to on January 3, 1973, to administer the oath of office to the Honorable Joseph R. Biden, Jr., Senator-elect of Delaware, I now wish to submit my report to the Senate.

"I administered the oath of office to Senator Biden in the Wilmington General Hospital, Delaware Division, in Wilmington, Del., on yesterday, January 5, 1973, and hand to the President of the Senate a signed copy of the oath, which is in addition to the oral affirmation made by the Senator as required by law. . . .

"The ACTING PRESIDENT pro tempore. The oath will be placed on file and, without objection, will be printed in the RECORD at this point.

"The text of the oath reads as follows:

"I do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God."

JOSEPH R. BIDEN, JR.

Signed at 12:50 p.m., at Wilmington General Hospital, Delaware Division, in the city of Wilmington, Delaware, on January 5, 1973.

FRANCIS R. VALEO,  
*Secretary of the Senate.*

### **Governor Notified of Senate Action on Contested Case:**

The Senate having decided that neither the contestant nor the contestee was entitled to be seated as a Senator from the State of Pennsylvania, the Governor of that State was ordered to be notified by the Vice President of the action of the Senate.<sup>20</sup>

### **Legal Age Requirements:**

The right of Rush D. Holt to a seat in the Senate from the State of West Virginia was challenged on the ground that when elected he had not attained the age of 30 years as required by the Constitution.<sup>21</sup>

The Senate concluded:

(1) In election cases the ineligibility of a majority candidate, for a seat in the Congress gives no title to the candidate receiving the next highest number of votes.

(2) The date on which a Senator-elect presents himself to the Senate, is sworn, and takes his seat should be determinative of the age qualifications prescribed by the Constitution.

(3) Mr. Holt not having presented himself to take the oath until after he had reached the age of 30 years, he was declared entitled to his seat.<sup>22</sup>

### **Oath Administered—Circumstances of:**

A Senator, appointed by the Governor to fill a vacancy in an unexpired term, and who was subsequently elected to serve for the remainder of the unexpired term, must be sworn in again.<sup>23</sup>

Various Senators have been sworn in office as successors to deceased Senators on the day their deaths were announced to the Senate.<sup>24</sup>

In one instance a Senator with a temporary appointment from Georgia to fill a vacancy was permitted to take

<sup>20</sup> Dec. 6, 1929, 71-2, *Journal*, p. 28, *Record*, p. 198.

<sup>21</sup> See Jan. 3, Apr. 18, May 15, June 19, 20, 21, 1935, 74-1, *Journal*, pp. 2, 279, 344, 456, *Record*, pp. 4, 5915, 7547, 9650, 9842.

<sup>22</sup> Jan. 3, 1935, 74-1, *Journal*, p. 3, *Record*, p. 4; Apr. 18, 1935, 74-1, *Journal*, p. 279, *Record*, p. 5915; May 15, 1935, 74-1, *Journal*, p. 344, *Record*, p. 7547; June 19 and 21, 1935, 74-1, *Journal*, p. 456, *Record*, pp. 9650, 9842.

<sup>23</sup> See Mar. 4, 1902, 57-1, *Record*, p. 2344.

<sup>24</sup> Sept. 5, 1945, 79-1, *Record*, p. 8318; Nov. 17, 1947, 80-1, *Record*, pp. 10569-70; Jan. 8, 1952, 82-2, *Record*, pp. 13-14.

the oath of office at the beginning of a new session, the credentials of the Senator-elect for the unexpired term not having at that time been presented to the Senate.<sup>25</sup>

### **Oath Never Administered:**

Various Senators have been appointed or elected and never sworn in since the adoption of the "Lame-Duck" amendment—(Twentieth),<sup>26</sup> not having had an opportunity to take an oath of office in open session of the Senate.<sup>27</sup>

The confirmation of the nomination of a Senator to be an ambassador to a foreign country does not vacate his seat in the Senate, and he remains a Senator, unless he resigns in the meantime, until he takes the oath of office as ambassador.<sup>28</sup>

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## **Procedure for Administering Oaths**

### **Administration of Oaths of Office Privileged**

#### **Credentials Presented En Bloc:**

On January 3, 1973, on the opening day of the 93d Congress, the credentials of Senators elected at the preceding November election were laid before the Senate en bloc, immediately after the Vice President had laid before the Senate the resignation of one Senator and the certificate of appointment of another Senator to fill that unexpired term, together with the certificate of one Senator-elect who was elected to fill a short term. In presenting the certificates of the 33 newly elected Senators for 6-year terms, the Vice President stated:

The VICE PRESIDENT. The Chair lays before the Senate the credentials of 33 Senators elected for 6-year terms beginning January 3, 1973. All certificates, the Chair is advised, are in the form suggested by the Senate, except the ones from Delaware and Arkansas, which

<sup>25</sup> Nov. 21, 1922, 67-3, *Record*, pp. 8, 11-14.

<sup>26</sup> Richard C. Hunter, Nebraska, 1934; Joseph C. O'Mahoney, Wyoming, 1933, 1934; William L. Hill, Florida, 1936; Guy V. Howard, Minnesota, 1936; Alexander G. Barry, Oregon, 1938; Miss Gladys Pyle, South Dakota, 1938; Thomas M. Storke, California, 1938; Spessard L. Holland, Florida, 1946; Ralph E. Flanders, Vermont, 1946; Raymond E. Baldwin, Connecticut, 1946; Kingsley Taft, Ohio, 1946; Harry P. Cain, Washington, 1946; Charles E. Potter, Michigan, 1952; William A. Purtell, Connecticut, 1956.

<sup>27</sup> Jan. 5, 1937, 75-1, *Journal*, p. 3, *Record*, pp. 3-5.

<sup>28</sup> See Nov. 21, 1929, 71-1, *Record*, p. 5903.



used State forms but contained all the requirements of the form suggested by the Senate.

If there be no objection, the reading of the 33 certificates will be waived and they will be printed in full in the Record.

There being no objection, the reading of the 33 certificates was waived and printed in the Record. . . .<sup>29</sup>

On January 3, 1985, on the opening day of the 99th Congress, 1st Session, the credentials of Senators elected at the preceding November election were laid before the Senate en bloc, immediately after the Vice President had laid before the Senate the letter of resignation of one Senator and the certificate of appointment of another Senator to fill that unexpired term. In presenting the certificates of the 33 newly elected Senators for 6-year terms, the Record reported the following:

“The Vice President laid before the Senate the credentials of the following Senators-elect duly chosen by the qualified electors of their respective states for the term beginning January 3, 1985 which were ordered to be placed on file.”

This has been the recent practice of the Senate in the administration of the oath of office at the beginning of a new Congress.

The credentials of a newly elected Senator to fill a vacancy are laid down before the Senate by the Presiding Officer without any request from the floor being necessary.<sup>30</sup>

#### **Matters Held Not Privileged:**

Resolutions of this general nature but which have been held nonprivileged involved the following subjects: (1) declaring unlawful the election of a Senator by the Legislature of the State of Kansas, and that the individual was not entitled to a seat in the Senate (which went over under the rule);<sup>31</sup> (2) authorizing the administration of the oath to a Senator who had appeared to take the oath of office and directing an investigation of certain charges made against him (ordered to lie over 1 day under the rule);<sup>32</sup> (3) fling a report on the campaign contributions and expenditures of a Senator;<sup>33</sup> (4) declaring a sitting Senator not entitled to retain a seat in the Senate because

<sup>29</sup> Jan. 3, 1973, 93-1, *Record*, p. 3.

<sup>30</sup> Jan. 23, 1984, 98-2, *Record*, p. 1.

<sup>31</sup> Jan. 31, 1895, 53-3, *Journal*, p. 84, *Record*, p. 1566.

<sup>32</sup> Dec. 6, 1926, 69-2, *Journal*, p. 4, *Record*, pp. 7, 8.

<sup>33</sup> Feb. 5, 1927, 69-2, *Record*, p. 3017.

of an illegal election (ordered to lie over 1 day under the rule);<sup>34</sup> (5) and a resolution providing for the impounding of ballot boxes and records of an election involving the right of a Senator to a seat in the Senate.<sup>35</sup>

#### Practice of Senate in Administering Oaths:

Under orderly procedure, a Senator-elect, upon presentation of credentials, should be sworn in, and all matters touching his qualifications should be determined thereafter, according to a statement by the Chairman of the Committee on Privileges and Elections in 1903.<sup>36</sup>

Under recent practices of the Senate, credentials of Senators-elect for full terms are laid down en bloc and ordered printed in the *Congressional Record* without being read.<sup>37</sup>

Upon the convening of a new Congress in recent years, after the credentials are laid down en bloc and ordered printed, the oaths are administered, immediately after which the roll is called to ascertain if a quorum is present.<sup>38</sup>

Upon the convening of a second session of a Congress, the Vice President directed the roll to be called to ascertain the presence of a quorum.<sup>39</sup>

In the 70th Congress the Senate returned to the practice of administering the oath of office to Senators-elect in groups of fours.<sup>40</sup>

Pending action on a resolution denying a seat to a person appointed by the Governor of a State to fill a vacancy in the Senate, the administration of the oath to such appointee would not be in order.<sup>41</sup> The reference of such resolution to a committee would not be construed to be an impediment to the immediate administration of the

<sup>34</sup> Jan. 9, 1911, 61-3, *Journal*, p. 64, *Record*, pp. 648-49.

<sup>35</sup> See Jan. 29, 1931, 71-3, *Record*, p. 3429.

<sup>36</sup> Mar. 5, 1903, 58-Special Session, *Record*, p. 1; see also Dec. 5, 1927, 70-1, *Journal*, p. 4, *Record*, p. 3.

<sup>37</sup> Jan. 3, 1947, 80-1, *Record*, p. 3; Dec. 31, 1948, 80-2, *Record*, p. 10253; Jan. 3, 1953, 83-1, *Record*, p. 3; Jan. 5, 1955, 84-1, *Journal*, p. 3; see also Jan. 3, 1939, 76-1, *Record*, p. 3.

<sup>38</sup> See proceedings for the opening day of recent new Congresses. See also Apr. 4, 1911, 62-1, *Record*, pp. 1, 2; *Journals* of first session of recent new Congresses; Mar. 5, 1903, 58-Special Session, *Record*, p. 1; Dec. 2, 1907, 60-1, *Record*, p. 1.

<sup>39</sup> Dec. 3, 1928, 70-2, *Record*, p. 3.

<sup>40</sup> Dec. 5, 1927, 70-1, *Record*, p. 3; see also Jan. 3, 1947, 80-1, *Record*, pp. 3-32.

<sup>41</sup> See Dec. 12, 1929, 71-2, *Journal*, pp. 38-39, *Record*, pp. 529-33.

oath.<sup>42</sup> If such resolution were adopted, the oath could not be administered to such appointee.<sup>43</sup>

In one case, a Senator-elect, upon the presentation of his certificate of election, was escorted to the desk for administration of the oath by the senior Senator of his State and also the Senator who was appointed to fill the vacancy to which the Senator-elect had been subsequently elected.<sup>44</sup>

#### Privileged Status and Precedence of Business:

The presentation of the credentials of a Senator-elect is a matter of the highest privilege and will not displace the unfinished business,<sup>45</sup> and questions arising in connection therewith shall be proceeded with until disposed of; <sup>46</sup> but they may not be presented while a motion to correct the *Journal* is pending,<sup>47</sup> except by unanimous consent,<sup>48</sup> since the reading of the *Journal* has precedence over the question of administering the oath to a Senator.<sup>49</sup>

A resolution to administer the oath to a Senator-elect is a privileged matter and does not have to lie over 1 day under the rule for consideration, and is in order during the morning business, and by majority vote it can be considered.<sup>50</sup>

The report of a committee involving the right of a person to a seat in the Senate, including a report on an appointment to fill a vacancy <sup>51</sup> arising in connection with the credentials, is highly privileged, and has precedence over the unfinished business or motions except those designated in Rule XXII.<sup>52</sup> A resolution declaring a person entitled to a seat in the Senate, while highly privileged, is subject to the motions specified in Rule XXII, under which a motion to proceed to the consideration of executive business is in order.<sup>53</sup>

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Nov. 29, 1950, 81-2, *Record*, pp. 15942-43.

<sup>45</sup> Mar. 3, 1927, 69-2, *Journal*, pp. 268-69, *Record*, pp. 5513-19.

<sup>46</sup> Jan. 6, 1932, 72-1, *Journal*, p. 126.

<sup>47</sup> See Nov. 17, 1942, 77-2, *Record*, p. 8920.

<sup>48</sup> Nov. 18, 1942, 77-2, *Record*, p. 8923.

<sup>49</sup> Mar. 5, 1901, 57-Special Session, *Record*, p. 4.

<sup>50</sup> Oct. 17, 1877, 45-1, *Journal*, pp. 16-17; Nov. 28, 1877, 45-1, *Journal*, p. 101.

<sup>51</sup> Mar. 6, 1914, 63-2, *Record*, p. 4406.

<sup>52</sup> Apr. 9 and 10, 1890, 51-1, *Record*, pp. 3201, 3228.

<sup>53</sup> Mar. 29, 1893, 53-Special Session, *Journal*, p. 178, *Record*, pp. 48-49.

A motion to administer the oath of office to an appointee to fill an unexpired term<sup>54</sup> or a resolution denying a Senator-elect a seat in the Senate is a matter of the highest privilege, and does not have to lie over 1 day under the rule;<sup>55</sup> but the Senate, by a majority vote, may lay such a resolution aside and take up another matter.<sup>56</sup>

A resolution determining which of two claimants was entitled to a seat in the Senate from the State of Idaho was held to be a matter of high privilege, and a substitute amendment alleged to be simply a declaration of principles and not germane or pertinent was held by the Senate in 1892 not to be in order.<sup>57</sup>

A committee report recommending that William S. Vare and William B. Wilson be denied a seat in the Senate from the State of Pennsylvania was held to be a privileged matter, and did not have to lie over 1 day under the rule, but might be displaced by another privileged matter by a majority vote.<sup>58</sup>

### Consideration of Contested Election Cases:

It is not in order for the Presiding Officer, upon the request of a Senator, in the absence of a motion or unanimous consent request, to lay before the Senate as a matter of high privilege, the report of a committee on a contested election case.<sup>59</sup>

It is not in order, upon the request of a Senator, to lay before the Senate as a privileged matter a resolution of the Calendar declaring a person was not legally elected a Senator, but a motion is necessary to proceed to its consideration.<sup>60</sup>

A committee report on a contested election case is privileged and does not have to lie over 1 day.<sup>61</sup>

Where such a report contains recommendations only without an accompanying resolution or motion, there would be nothing before the Senate upon which action could be taken.<sup>62</sup>

<sup>54</sup> Mar. 9, 1885, 49-Special Session, *Record*, p. 4.

<sup>55</sup> Sept. 9, 1929, 71-1, *Journal*, p. 131, *Record*, p. 3413; Dec. 5, 1929, 71-2, *Journal*, p. 26, *Record*, p. 128; Dec. 2, 1930, 71-3, *Journal*, p. 5, *Record*, p. 32.

<sup>56</sup> Jan. 31, 1898, 55-2, *Record*, p. 1243; Feb. 17, 1898, 55-2, *Record*, p. 1825.

<sup>57</sup> Mar. 3, 1892, 52-1, *Journal*, pp. 135-36, *Record*, p. 1675.

<sup>58</sup> Dec. 5, 1929, 71-2, *Journal*, p. 26, *Record*, p. 128.

<sup>59</sup> Nov. 15 and 16, 1921, 67-1, *Journal*, pp. 335-37, *Record*, pp. 7692-97, 7746, 7775.

<sup>60</sup> May 2, 1900, 50-1, *Record*, p. 4961.

<sup>61</sup> Dec. 5, 1929, 71-2, *Journal*, p. 26; see Mar. 31, 1939, 76-1, *Record*, p. 3611.

<sup>62</sup> Nov. 15 and 16, 1921, 67-1, *Journal*, pp. 335-37, *Record*, pp. 7692-97, 7746, 7775.

In 1929, a discussion took place on the policy, where the right of a Senator-elect to a seat was challenged, of administering the oath upon presentation of credentials which are valid upon their face, and later inquiring into the rights of the Senator-elect to retain his seat.<sup>63</sup>

### Debate of Reference of Credentials:

A motion or resolution to refer the credentials of a Senator-elect to a committee is debatable.<sup>64</sup>

### Floor Privileges of Senators-Elect:

Under Rule XXIII, and the practice of the Senate, the privilege of the floor is extended to Senators-elect or bona fide claimants of a Senate seat, even if they are not permitted to take the oath of office, during any consideration of their respective credentials, or cases; and in some cases, pending a determination of the contest, the contestants have been granted the privilege of addressing the Senate or of being heard in their own defense.<sup>65</sup>

During the consideration of a resolution denying William S. Vare a seat in the Senate from the State of Pennsylvania, his physician was permitted to sit with him in the Senate Chamber.<sup>66</sup>

### Oath Administered Prior to Receipt of Credentials:

By unanimous consent or without objection, the oath of office has been administered to various Senators prior to receipt of their credentials on the basis of telegrams from the Governors of their respective States stating that their credentials were en route,<sup>67</sup> or that the election was authentic.<sup>68</sup>

Accordingly, in cases where no question was raised concerning the election of a Senator, the Senate by unani-

<sup>63</sup> Dec. 4, 1929, 71-2, *Record*, p. 90.

<sup>64</sup> Mar. 3, 1927, 69-2, *Journal*, pp. 268-69, *Record*, pp. 5513-19; Dec. 2, 1930, 71-3, *Journal*, p. 5, *Record*, p. 32.

<sup>65</sup> Mar. 16, 1897, 55-1, *Journal*, p. 5; Feb. 25, 1892, 52-2, *Journal*, p. 127, *Record*, p. 1432; Dec. 7, 1927, 70-1, *Journal*, p. 15, *Record*, p. 161; Dec. 4, 1929, 71-2, *Journal*, p. 19, *Record*, p. 80; Apr. 25, 1932, 72-1, *Journal*, p. 423, *Record*, pp. 8872-77.

<sup>66</sup> Dec. 4, 1929, 71-2, *Journal*, p. 18, *Record*, p. 75.

<sup>67</sup> Dec. 1, 1924, 68-2, *Journal*, p. 4; Feb. 3, 1933, 72-2, *Record*, p. 3237; Dec. 4, 1950, 81-2, *Record*, p. 16042; Nov. 18, 1942, 77-2, *Record*, p. 8923; June 30, 1941, 77-1, *Record*, p. 5745; Dec. 19, 1940, 76-3, *Journal*, p. 801; Jan. 3, 1935, 74-1, *Record*, pp. 4, 7. See the following citation for instance of objection to such procedure; Jan. 10, 1930, 71-2, *Record*, p. 1355.

<sup>68</sup> *Ibid.*; Aug. 29, 1957, 85-1, *Record*, p. 16457.

mous consent on various occasions has administered the oath of office to such Senators-elect, prior to the receipt of their credentials on the grounds that:

(1) the certificate had been issued and mailed to the President of the Senate;<sup>69</sup>

(2) pursuant to a telegram from the Governor of a State announcing the appointment of a Senator to fill a vacancy and stating that the certificate of appointment had been mailed;<sup>70</sup>

(3) a certified statement of the election submitted to the Secretary of the Senate;<sup>71</sup>

(4) a telegram from the Governor certifying the election of the said Senator;<sup>72</sup>

(5) and on the basis of an authenticated statement prepared by the Secretary of State of the said State showing that the Senator had received a majority of the votes cast for that office but since under the State law the canvassing board could not meet until a subsequent date, a formal certificate of election could not be issued.<sup>73</sup>

### **Oath Held Up—Candidate Asked To Stand Aside:**

In the 70th Congress, in the administration of the oath to Senators-elect, when the names of Frank L. Smith, of Illinois and William S. Vare, of Pennsylvania, were reached, resolutions denying them seats in the Senate because of excessive campaign expenditures were submitted and they were requested to stand aside. By unanimous consent, however, the further consideration of their credentials was postponed without prejudice to their rights until the next day.<sup>74</sup> The same results, in effect, were accomplished in the case of Theodore G. Bilbo, of Mississippi, in January 1947; and while an agreement was reached to pay him and his staff, the oath was never administered since he died before the issue was settled.<sup>75</sup>

<sup>69</sup> Dec. 1, 1924, 68-2, *Journal*, p. 4, *Record*, pp. 3-4.

<sup>70</sup> Feb. 3, 1933, 72-2, *Journal*, p. 156, *Record*, p. 3237.

<sup>71</sup> Nov. 27, 1950, 81-2, *Record*, p. 15772.

<sup>72</sup> Nov. 28, 1950, 81-2, *Record*, p. 15919.

<sup>73</sup> Jan. 3, 1935, 74-1, *Journal*, p. 4, *Record*, p. 7; see also Nov. 27, 1950, 81-2, *Record*, p. 15772; Nov. 28, 1950, 81-2, *Record*, p. 15919.

<sup>74</sup> Dec. 5, 1927, 70-1, *Journal*, p. 4, *Record*, pp. 3-5.

<sup>75</sup> Jan. 3 and 4, 1947, 80-1, *Record*, pp. 3-32, 109-10.

### Reference of Credentials:

A motion or resolution to refer the credentials of a Senator-elect to a committee is privileged,<sup>76</sup> and has precedence over the administration of the oath to such a Senator-elect.<sup>77</sup>

After the name of a Senator-elect is called, while the question of swearing him in is pending the consideration of a resolution to refer his credentials to a committee and to deny him the right to take his oath of office in the meantime is privileged and takes precedence over swearing him in, but the resolution is open to amendment.<sup>78</sup> A resolution to refer is privileged and does not have to lie over a day.<sup>79</sup>

Reference to a committee of a resolution denying a seat to an appointee of the Governor of a State to fill a vacancy in the Senate would not be construed to be an impediment to the administration of the oath.<sup>80</sup>

A motion to refer to a committee a document which has not been presented to the Senate and not in its possession is not in order.<sup>81</sup>

### Sworn in Without Prejudice:

In recent years various Senators-elect against whom charges or petitions of contest or both were filed, have been sworn in without prejudice to either themselves or the Senate,<sup>82</sup> and then resolutions to exclude or affirm their membership in the Senate were disposed of by a majority vote at a later date.<sup>83</sup> For example, the seating without prejudice of Pierre Emil George Salinger, appointed a Senator by the Governor of the State of California, to succeed the late Senator Clair Engle was challenged.<sup>84</sup> The legality of the appointment having been challenged, Mr. Salinger was seated without prejudice, and the Committee on Rules and Administration was di-

<sup>76</sup> Mar. 3, 1927, 69-2, *Journal*, pp. 268-69, *Record*, pp. 5513-19; Dec. 2, 1930, 71-3, *Journal*, p. 5, *Record*, p. 32.

<sup>77</sup> Dec. 5, 1916, 64-2, *Record*, pp. 11, 12.

<sup>78</sup> Jan. 3, 1947, 80-1, *Record*, pp. 3-32.

<sup>79</sup> Dec. 1, 1930, 71-3, *Journal*, p. 5.

<sup>80</sup> See Dec. 12, 1929, 71-2, *Journal*, pp. 38, 39, *Record*, pp. 529, 533.

<sup>81</sup> Mar. 3, 1927, 69-2, *Journal*, pp. 268-69, *Record*, pp. 5513-19, 5531.

<sup>82</sup> Jan. 3, 1951, 82-1, *Record*, p. 3; Jan. 3, 1953, 83-1, *Record*, p. 7; Jan. 3, 1941, 77-1, *Record*, pp. 3-4; see Mar. 27, 1942, 77-2, *Record*, p. 3063.

<sup>83</sup> *Ibid.*

<sup>84</sup> Aug. 5, 1964, 88-2, *Record*, pp. 18110-111; July 30, 1964, 88-2, *Record*, pp. 18107-20; Aug. 12 and 13, 1964, 88-2, *Record*, pp. 19395-413, 19416-22.

rected to report back within a certain time on the question of legality.<sup>85</sup> The Acting President pro tempore expressed the opinion that a majority vote only would determine the legality of the appointment, or to take any subsequent action to declare him not entitled to his seat.<sup>86</sup> On August 13, 1964, the Senate adopted a resolution (S. Res. 351) reported by the Committee on Rules and Administration to affirm that Pierre Salinger was entitled to his seat which was adopted by a majority vote.<sup>87</sup>

### **Term of Office:**

*See also* "Salaries, etc.," pp. 1251-1253.

The action of the Governor of a State in certifying that the term of a person, chosen a Senator at a general election to fill the unexpired term, should begin on the following January 3, was challenged in 1939 as being beyond his power. The contention was made that the Senate fixes the time at which the service of a Senator begins, and that the Governor had only the right to certify the fact of election.<sup>88</sup> In that year, the Senate also decided that the term of service and compensation of a Senator appointed by the Governor of a State to fill a vacancy ended on the day of the election of his successor by the people when the Senate was in sine die adjournment.<sup>89</sup>

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## **CREDENTIALS OF SENATORS- ELECT**

*See* "Credentials and Oath of Office," pp. 695-710.

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<sup>85</sup> July 30, 1964, 88-2, *Record*, pp. 18107-20; Aug. 12 and 13, 1964, 88-2, *Record*, pp. 19395-413, 19416-22.

<sup>86</sup> *Ibid.*

<sup>87</sup> Aug. 13, 1964, 88-2, *Journal*, p. 523.

<sup>88</sup> Jan. 3 and 16, 1939, 76-1, *Record*, pp. 4, 369-70.

<sup>89</sup> Jan. 4, Feb. 1, 2, 1939, 76-1, *Journal*, pp. 8, 83, 88, *Record*, pp. 64, 990, 1058.