
CONSTITUTION

WE THE PEOPLE of the United States, in Order
§1. The preamble. to form a more perfect Union, es-
tablish Justice, insure domestic
Tranquility, provide for the common defence,
promote the general Welfare, and secure the
Blessings of Liberty to ourselves and our Pos-
terity, do ordain and establish this Constitution
for the United States of America.

The First Continental Congress met in Philadelphia in September, 1774
and adopted the Declaration and Resolves of the First
§2. Formation of the Continental Congress, embodying rights and principles
Constitution. later to be incorporated into the Constitution of the
United States. The Second Continental Congress adopted in November,
1777 the Articles of Confederation, which the States approved in July,
1778. Upon recommendation of the Continental Congress, a convention
of State representatives met in May, 1787 to revise the Articles of Confed-
eration and reported to the Continental Congress in September a new Con-
stitution, which the Congress submitted to the States for ratification. Nine
States, as required by the Constitution for its establishment, had ratified
by June 21, 1788, and eleven States had ratified by July 26, 1788. The
Continental Congress adopted a resolution on September 13, 1788, putting
the new Constitution into effect; the First Congress of the United States
convened on March 4, 1789, and George Washington was inaugurated as
the first President on April 30, 1789.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 3. Legislative powers vested in Congress.

The power to legislate includes the power to conduct inquiries and investigations. See *Kilbourn v. Thompson*, 103 U.S. 168 (1880); *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959). For the power of the House to punish for contempt in the course of investigations, see § 293, *infra*.

§ 4. Power to investigate.

§ 5. Members chosen by the people of the States every second year.

SECTION 2. ¹The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *.

This clause requires election by the people and State authority may not determine a tie by lot (I, 775).

The phrase “by the people of the several States” means that as nearly as practicable one person’s vote in a congressional election is to be worth as much as another’s. *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969). 2 U.S.C. 2a mandates apportionment of Representatives based upon population, and 2 U.S.C. 2c requires the establishment by the States of single-Member congressional districts. For elections generally, see *Deschler*, ch. 8.

The term of a Congress, before the ratification of the 20th amendment to the Constitution, began on the 4th of March of the odd numbered years and extended through two years. This resulted from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, “the first Wednesday in March next” to be “the time for commencing proceedings under the said Constitution.” This date was March 4, 1789. Soon after the first Congress assembled a joint committee determined that the terms of Representatives and Senators of the first class commenced on that day, and must necessarily terminate with the 3d of March, 1791 (I, 3). Under the 20th amendment to the Constitution the terms of Representatives and Senators begin on the 3d of January of the odd-numbered years, regardless of when Congress actually convenes. By a practice having the force of common law, the House meets at noon when no other hour is fixed (I, 4, 210). In the later practice a resolution

§ 6. Term of a Congress.

fixing the daily hour of meeting is agreed to at the beginning of each session.

Before adoption of the 20th amendment, the legislative day of March 3 extended to noon on March 4 (V, 6694-6697) and, unless earlier adjourned, the Speaker could at that time declare the House adjourned sine die, without motion or vote, even to the point of suspending a roll call then in progress (V, 6715-6718).

The Legislative Reorganization Act of 1970 (84 Stat. 1140) provides that unless Congress otherwise specifies the two Houses shall adjourn sine die not later than the last day in July. This requirement is not applicable, under the terms of that Act, if a state of war exists pursuant to a congressional declaration or if, in an odd-numbered (nonelection) year, the Congress has agreed to adjourn for the month preceding Labor Day. For more on this provision, see § 1106, *infra*.

§ 7. Electors of the House of Representatives.

* * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

The House, in the decision of an election case, has rejected votes cast by persons not naturalized citizens of the United States, although they were entitled to vote under the statutes of a State (I, 811); but where an act of Congress had provided that a certain class of persons should be deprived of citizenship, a question arose over the proposed rejection of their votes in a State wherein citizenship in the United States was not a qualification of the elector (I, 451). In an exceptional case the House rejected votes cast by persons lately in armed resistance to the Government, although by the law of the State they were qualified voters (I, 448); but later, the House declined to find persons disqualified as voters because they had formerly borne arms against the Government (II, 879).

§ 8. Decisions of the Court.

The power of the States to set qualifications for electors is not unlimited, being subject to the 15th, 19th, 24th, and 26th amendments, and to the equal protection clause of the United States Constitution. *Carrington v. Rash*, 380 U.S. 89 (1965); *Kramer v. Union Free School District*, 395 U.S. 621 (1969).

Congress has some power in setting qualifications for electors, as in protecting the right to vote and lowering the minimum age for electors in congressional elections. *Katzenbach v. Morgan*, 384 U.S. 641 (1966); *Oregon v. Mitchell*, 400 U.S. 112 (1970).

§ 9. Age as a qualification of the Representative.

²No Person shall be a Representative who shall not have attained to the Age of twenty five Years, * * *.

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§ 10-§ 11

A Member-elect not being of the required age, was not enrolled by the Clerk and he did not take the oath until he had reached the required age (I, 418).

§ 10. Citizenship as a qualification of the Member.

* * * and been seven Years a Citizen of the United States, * * *.

Henry Ellenbogen, Pa., had not been a citizen for seven years when elected to the 73d Congress, nor when the term commenced on March 4, 1933. He was sworn at the beginning of the second session on January 3, 1934, when a citizen for seven and one-half years (see H. Rept. 1431 and H. Res. 370, 73d Cong.). A native of South Carolina who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A woman who forfeited her citizenship through marriage to a foreign subject and later resumed it through naturalization less than seven years before her election, was held to fulfill the constitutional requirement as to citizenship and entitled to a seat in the House (VI, 184). A Member who had long been a resident of the country, but who could not produce either the record of the court nor his final naturalization papers, was nevertheless retained in his seat by the House (I, 424).

§ 11. Inhabitancy as a qualification of the Member.

* * * and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The meaning of the word "inhabitant" and its relation to citizenship has been discussed (I, 366, 434; VI, 174), and the House has held that a mere sojourner in a State was not qualified as an inhabitant (I, 369), but a contestant was found to be an actual inhabitant of the State although for sufficient reason his family resided in another State (II, 1091). Residence abroad in the service of the Government does not destroy inhabitancy as understood under the Constitution (I, 433). One holding an office and residing with his family for a series of years in the District of Columbia exclusively was held disqualified to sit as a Member from the State of his citizenship (I, 434); and one who had his business and a residence in the District of Columbia and had no business or residence in Virginia was held ineligible to a seat from that State (I, 436). One who had a home in the District of Columbia, and had inhabited another home in Maryland a brief period before his election, but had never been a citizen of any other State, was held to be qualified (I, 432). Also a Member who had resided a portion of a year in the District of Columbia, but who had a home in the State of his citizenship and was actually living there at the time of the election, was held to be qualified (I, 435). In the *Updike v. Ludlow* case, 71st Congress, it was decided that residence in the District of Colum-

bia for years as a newspaper correspondent and maintenance there of church membership were not considered to outweigh payment of poll and income taxes, ownership of real estate, and a record for consistent voting in the district from which elected (VI, 55), and in the same case excuse from jury duty in the District of Columbia on a plea of citizenship in the State from which elected and exercise of incidental rights of such citizenship, were accepted as evidence of inhabitancy (VI, 55).

Whether Congress may by law establish qualifications other than those prescribed by the Constitution has been the subject of much discussion (I, 449, 451, 457, 458, 478); but in a case wherein a statute declared a Senator convicted of a certain offense “forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States,” the Supreme Court expressed the opinion that the final judgment of conviction did not operate, ipso facto, to vacate the seat or compel the Senate to expel or regard the Senator as expelled by force alone of the judgment (II, 1282). Whether the House or Senate alone may set up qualifications other than those of the Constitution has also been a subject often discussed (I, 414, 415, 443, 457, 458, 469, 481, 484). The Senate has always declined to act on the supposition that it had such a power (I, 443, 483), and during the stress of civil war the House of Representatives declined to exercise the power, even under circumstances of great provocation (I, 449, 465). But later, in one instance, the House excluded a Member-elect on the principal argument that it might itself prescribe a qualification not specified in the Constitution (I, 477). The matter was extensively debated in the 90th Congress in connection with the consideration of resolutions relating to the seating of Representative-elect Adam C. Powell of New York (H. Res. 1, Jan. 10, 1967, p. 14; H. Res. 278, Mar. 1, 1967, p. 4997). In *Powell v. McCormack*, 395 U.S. 486 (1969), the Supreme Court found that the power of Congress to judge the qualifications of its Members was limited to an examination of the express qualifications stated in the Constitution.

It has been decided by the House and Senate that no State may add to the qualifications prescribed by the Constitution (I, 414–416, 632); and the Supreme Court so ruled in *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 779 (1995). There, the Court held that States may not “change, add to, or diminish” constitutional qualifications of Members, striking down a State statute prohibiting three-term incumbents from appearing on the general election ballot. For qualifications generally, see Deschler, ch. 7, §§ 9–14.

For expulsion of seated Members, which requires a two-thirds vote rather than a majority vote, see article I, section 5, clause 2 (§ 62, *infra*).

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§ 13-§ 15

Both Houses of Congress have decided, when a Member-elect is found to be disqualified, that the person receiving the next highest number of votes is not entitled to the seat (I, 323, 326, 450, 463, 469; VI, 58, 59), even in a case wherein reasonable notice of the disqualification was given to the electors (I, 460). In the event of the death of a Member-elect, the candidate receiving the next highest number of votes is not entitled to the seat (VI, 152).

§ 13. Minority candidate not seated when returned Member is disqualified.

³[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] * * *

§ 14. The old provision for apportionment of Representatives and direct taxes.

The part of this clause relating to the mode of apportionment of Representatives was changed after the Civil War by section 2 of the 14th amendment and, as to taxes on incomes without apportionment, by the 16th amendment.

* * * The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland

§ 15. Census as a basis of apportionment.

six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The census has been taken decennially since 1790, and, with the exception of 1920, was followed each time by reapportionment. In the First Congress the House had 65 Members; increased after each census, except that of 1840, until 435 was reached in 1913 (VI, 39, 40). The Act of June 18, 1929 (46 Stat. 26), as amended by the Act of November 15, 1941 (55 Stat. 761), provides for reapportionment of the existing number (435) among the States following each new census (VI, 41–43; see 2 U.S.C. 2a). Membership was temporarily increased to 436, then to 437, upon admission of Alaska (72 Stat. 345) and Hawaii (73 Stat. 8), but returned to 435 on January 3, 1963, the effective date of the reapportionment under the 18th Decennial census.

Under the later but not the earlier practice, bills relating to the census and apportionment are not privileged for consideration (I, 305–308; VI, 48, VII, 889; Apr. 8, 1926, p. 7147).

Decisions of the Supreme Court of the United States: *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Veazie Bank v. Fenno*, 75 U.S. (8 Wall.) 533 (1869); *Scholey v. Rew*, 90 U.S. (23 Wall.) 331 (1874); *De Treville v. Smalls*, 98 U.S. 517 (1878); *Gibbons v. District of Columbia*, 116 U.S. 404 (1886); *Pollock v. Farmers Loan & Trust Co.* (Income Tax case), 157 U.S. 429 (1895); *Pollock v. Farmers' Loan & Trust Co.* (Rehearing), 158 U.S. 601 (1895); *Thomas v. United States*, 192 U.S. 363 (1904); *Flint v. Stone Tracy Co.* (Corporation Tax cases), 220 U.S. 107 (1911); *Eisner v. Macomber*, 252 U.S. 189 (1920); *New York Trust Co. v. Eisner*, 256 U.S. 345 (1921); *Franklin v. Massachusetts*, 505 U.S. 788 (1992); *Utah v. Evans*, 536 U.S. 452 (2002).

§ 16. Decisions of the Court.

⁴When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

§ 17. Writs for elections to vacancies in representation.

Vacancies are caused by death, resignation, declination, withdrawal, or by action of the House in declaring a vacancy as existing or causing one by expulsion. When a vacancy occurs, or when a new Member is sworn, the Speaker announces the resulting adjustment in the whole number of the House pursuant to clause 5(d) of rule XX (see § 1024b, *infra*). Clause 5(c) of rule XX permits the House to operate with a provisional number of the House if the House is without a quorum due to catastrophic circumstances (see § 1024a, *infra*). In extraordinary circumstances, section 8 of title 2, United States Code, prescribes special election rules to expedite the filling of vacancies in representation of the House.

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§ 18–§ 19

It was long the practice to notify the executive of the State when a vacancy was caused by the death of a Member during a session (II, 1198–1202); but it is now the practice for State authorities to take cognizance of the vacancies without notice. When a Member dies while not in attendance in the House or during a recess, the House is sufficiently informed of the vacancy by the credentials of the successor, when they set forth the fact of the death (I, 568). The death of a Member-elect creates a vacancy, although no certificate may have been awarded (I, 323), and in such a case the candidate having the next highest number of votes may not receive the credentials (I, 323; VI 152). A Member whose seat was contested having died, the House did not admit a claimant with credentials until contestant's claim was settled (I, 326); where a contestant died after a report in his favor, the House unseated the returned Member and declared the seat vacant (II, 965), and in a later case the contestant having died, the committee did not recommend to the House a resolution it had agreed to declaring he had not been elected (VI, 112). In the 93d Congress, when two Members-elect were passengers on a missing aircraft and were presumed dead, the Speaker laid before the House documentary evidence of the presumptive death of one Member-elect and the declaration of a vacancy by the Governor, as well as evidence that the status of the other Member-elect had not been officially determined by State authority. The House then adopted a privileged resolution declaring vacant the seat of the latter Member-elect to enable the Governor of that State to call a special election (Jan. 3, 1973, p. 15). For further discussion, see § 23, *infra*.

In recent practice the Member informs the House by letter that a resignation has been sent to the State executive (II, 1167–1176) and this is satisfactory evidence of the resignation (I, 567). Both a letter to the Speaker and a copy of the letter to the State executive are laid before the House. However, Members have resigned by letter to the House alone, it being presumed that the Member would also notify the Governor (VI, 226). Where a Member resigned by letter to the House the Speaker was authorized to notify the Governor (Nov. 27, 1944, p. 8450; July 12, 1957, p. 11536; Sept. 1, 1976, p. 28887). If a Member does not inform the House, the State executive may do so (II, 1193, 1194; VI, 232). The House has learned of a Member's resignation by means of the credentials of the successor (II, 1195, 1356). Where the fact of a Member's resignation has not appeared either from the credentials of the successor or otherwise, the Clerk has been ordered to make inquiry (II, 1209) or the House has ascertained the vacancy from information given by other Members (II, 1208).

It has been established that a Member or Senator may select a future date for a resignation to take effect and, until the arrival of that date, participate in the proceedings (II, 1220–1225, 1228, 1229; VI, 227, 228; Dec. 15, 1997, p. 26709; June 5, 2001, p. 9882; Nov. 27, 2001, p. 23006; Jan. 27, 2003, pp. 1750, 1751). It has been possible even for a Member

to resign a seat in the House to be effective on a date following the anticipated date of a special election that might fill the vacancy thereby created (Deschler, ch. 8, §9.3). However, the State concerned must be willing to treat the prospective resignation as a constitutional predicate for the issuance of a writ of election to fill a vacancy. For examples of resignation letters indicating that the State executive took cognizance of a prospective resignation, see January 8, 1952, (p. 14) (New York); July 9, 1991, (p. 17301) (Virginia); June 5, 2001, (p. 9882) (Florida), and Jan. 27, 2003, (p. 1751) (Texas). When the Governor of Oklahoma received a prospective resignation from one of its Members, the State provided by statute (enrolled Senate Bill Number 7X) for the holding of a special election before the effective date of the resignation (Feb. 28, 2002, p. 2245).

For the State to take cognizance of a prospective resignation, it must have assurances that there is no possibility of withdrawal (or modification). In one case a Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213). However, the House has allowed withdrawal in the case of defective resignation; that is, in which the Member had not actually transmitted the letter of resignation (VI, 229), or had transmitted it to an improper state official (Oct. 9, 1997, p. 22020). A Member may include in a letter of prospective resignation a statement of intention that the resignation be “irrevocable” in order to allay any concern about the prospect of withdrawal (June 5, 2001, p. 9882).

Acceptance of the resignation of a Member from the House is unnecessary (VI, 65, 226), and the refusal of a Governor to accept a resignation cannot operate to continue membership in the House (VI, 65). Only in a single exceptional case has the House taken action in the direction of accepting a resignation (II, 1214). Sometimes Members who have resigned have been reelected to the same House and taken seats (II, 1210, 1212, 1256; Jan. 28, 1965 and June 16, 1965, pp. 1452, 13774; Jan. 6, 1983 and Feb. 22, 1983, pp. 114, 2575). A Member who has not taken his seat resigned (II, 1231).

A letter of resignation is presented as privileged (II, 1167–1176); but a resolution to permit a Member to withdraw a resignation was not so treated (II, 1213). The Speaker having been elected Vice President and a Representative of the succeeding Congress at the same election, transmitted to the Governor of his State his resignation as a Member-elect (VI, 230, 453). A Member of the House having been nominated and confirmed as Vice President pursuant to the 25th amendment, submitted a letter of resignation as a Representative to the Governor of his State, and a copy of his letter of resignation was laid before the House by the Speaker following the completion of a joint meeting for his swearing as Vice President (Dec. 6, 1973, p. 39927). A Member of the House having been confirmed as Secretary of Defense, a copy of his letter of resignation was laid before the House before his taking the oath of that office (Mar. 20, 1989, p. 4976).

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§ 20–§ 23

A Member who has been elected to a seat may decline to accept it, and in such a case the House informed the executive of the State of the vacancy (II, 1234). The House has decided an election contest against a returned Member who had not appeared to claim the seat (I, 638). In one instance a Member-elect who had been convicted in the courts did not appear during the term (IV, 4484, footnote). On November 7, 1998, less than a week after his re-election as Representative from Georgia, Speaker Gingrich announced that he would not be a candidate for Speaker in the 106th Congress and that he would resign his seat as a Member of the 106th Congress. Although the letter of “withdrawal” was tendered on November 22, the Governor did not attempt to call a special election until after the term began on January 3, 1999 (Jan. 6, 1999, p. 42). A Member notified the Speaker and the Governor in one Congress that he did not intend to take his seat in the next Congress (Jan. 6, 2009, p. ___).

At the time of the secession of several States, Members of the House from those States withdrew (II, 1218). In the Senate, in cases of such withdrawals, the Secretary was directed to omit the names of the Senators from the roll (II, 1219), and the act of withdrawal was held to create a vacancy that the legislature might recognize (I, 383).

If the House, by its action in a question of election or otherwise, creates a vacancy, the Speaker is directed to notify the Executive of the State (I, 502, 709, 824; II, 1203–1205; Mar. 1, 1967, p. 5038; Jan. 3, 1973, p. 15; Feb. 24, 1981, pp. 2916–18). A resolution as to such notification is presented as a question of privilege (III, 2589), as is a resolution declaring a vacancy in which a Member-elect was unable to take the oath of office or to decline the office because of an incapacitating illness (Feb. 24, 1981, pp. 2916–18).

The House declines to give prima facie effect to credentials, even though they be regular in form, until it has ascertained whether or not the seat is vacant (I, 322, 518, 565, 569), and a person returned as elected at a second election was unseated on ascertainment that another person had actually been chosen at the first election (I, 646). Where a Member was re-elected to the House, although at the time of the election he had been unaccounted for for several weeks following the disappearance of the plane on which he was a passenger, the Governor of the State from which he was elected transmitted his certificate to the House in the regular fashion. When the Member-elect was still missing at the time the new Congress convened, and circumstances were such that other passengers on the missing plane had been presumed dead following judicial inquiries in the State where the plane was lost, the House declared the seat vacant (H. Res. 1, 93d Cong., Jan. 3, 1973, p. 15). In the 108th Congress the House codified in clause 5 of rule XX its practice of accounting for vacancies (sec. 2(1), H. Res. 5, Jan. 7, 2003, p. 7).

§ 20. Vacancy from declination.
§ 21. Vacancy by withdrawal.
§ 22. Vacancy by action of the House.
§ 23. Questions as to the existence of a vacancy.

The term “vacancy” as occurring in this paragraph of the Constitution has been examined in relation to the functions of the State executive (I, 312, 518). A Federal law empowers the States and Territories to provide by law the times of elections to fill vacancies (I, 516; 2 U.S.C. 8); but an election called by a governor in pursuance of constitutional authority was held valid although no State law prescribed time, place, or manner of such election (I, 517). Where two candidates had an equal number of votes, the governor did not issue credentials to either, but ordered a new election after they had waived their respective claims (I, 555). A candidate elected for the 104th Congress was appointed by the Governor to fill a vacancy for the remainder of the 103d Congress pursuant to a State law requiring the Governor to appoint the candidate who won the election to the 104th Congress. In that case the House authorized the Speaker to administer the oath to the Member-elect and referred the question of his final right to the seat in the 103d Congress to the Committee on House Administration (Nov. 29, 1994, pp. 29585, 29586). For a discussion of a State election to fill a prospective vacancy of the House, see § 19.

§ 24. Functions of the State executive in filling vacancies.

§ 25. Term of a Member elected to fill a vacancy.

§ 26. House chooses the Speaker and other officers.

A Member elected to fill a vacancy serves no longer time than the remainder of the term of the Member whose place he fills (I, 3). For the compensation and allowances of such Members, see § 87, *infra*.

⁵The House of Representatives shall chuse their Speaker and other Officers; * * *

The officers of the House are the Speaker, who has always been one of its Members and whose term as Speaker must expire with the term as a Member; and the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain (I, 187), no one of whom has ever been chosen from the sitting membership of the House and who continue in office until their successors are chosen and qualified (I, 187). In one case the officers continued through the entire Congress succeeding that in which they were elected (I, 244, 263). Former officers include Doorkeeper (abolished by the 104th Congress, see § 663a, *infra*) and Postmaster (abolished during the 102d Congress, see § 668, *infra*). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244). Currently, certain statutes impose on the officers duties that contemplate their continuance (I, 14, 15; 2 U.S.C. 75a–1, 83).

The Speaker, who was at first elected by ballot, has been chosen viva voce by surname in response to a call of the roll since 1839 (I, 187). The Speaker is elected by a majority of Members-elect voting by surname, a quorum being present (I, 216; VI, 24; Jan. 7, 1997, p. 117). The Clerk appoints tellers for this election (I, 217). Ultimately, the House, and not the Clerk, decides

§ 27. Election of a Speaker.