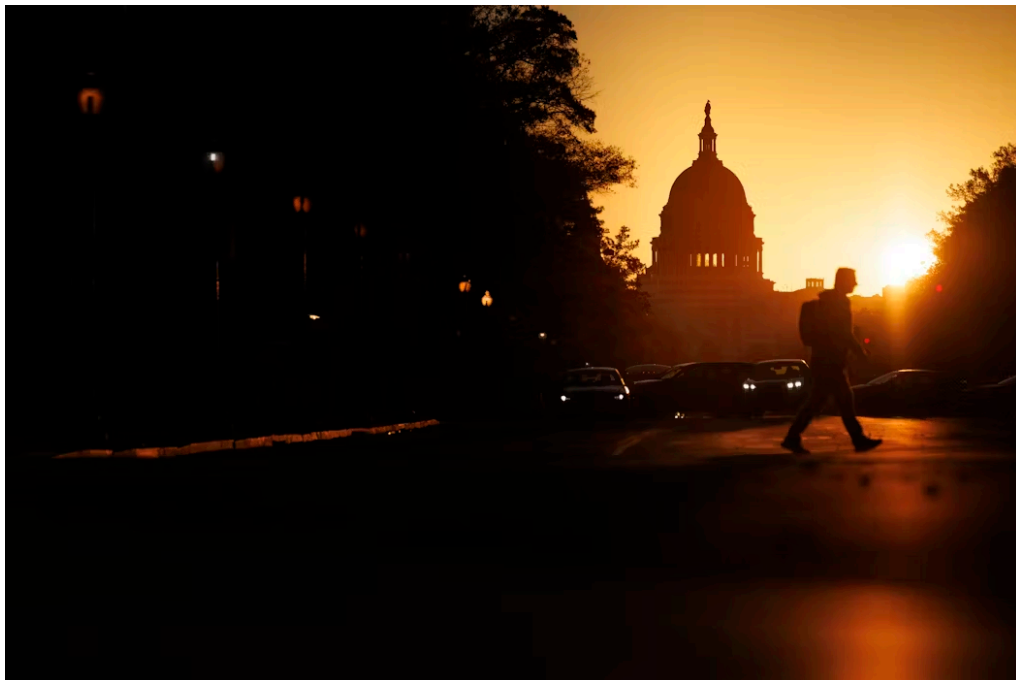


# House speaker's refusal to seat Arizona representative is supported by history and law

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The U.S. Capitol is seen on Nov. 5, 2025.

*Tom Brenner/Getty Images*

Adelita Grijalva won a special election in Arizona on Sept. 23, 2025, becoming the newest member of Congress and the state's first Latina representative.

Yet, despite the Arizona secretary of state's formal certification of Grijalva, a Democrat, as the winner of that election, Rep.-elect Grijalva has not been sworn into office.

Republican House Speaker Mike Johnson, who by law is responsible for making that happen, claims the government shutdown means Grijalva must wait until the federal government resumes normal operations.

In response, Arizona Attorney General Kris Mayes filed a lawsuit on Oct. 21 alleging that Johnson has denied the state its representation in Congress.

No one disputes that Grijalva is the next member of the House of Representatives for the 7th District of Arizona. And the House hasn't conducted business since Sept. 19, when Johnson gavelled it out of session.

So why does it matter whether Grijalva is sworn in now or later?

The lawsuit filed by Mayes claims Johnson is using his power to "strengthen his hand" in the ongoing budget battle that has shut down the federal government. Additionally, Grijalva has pledged to provide the last necessary signature to force a vote on a bipartisan measure demanding that the Trump administration release government files on convicted sex offender Jeffrey Epstein.

But as a law scholar who analyzes government institutions, I recognize that the speaker historically has had power to determine when the oath is administered. And courts have been reluctant to weigh in the speaker's use of that power.

## **The speaker's historical power**

The framers of the Constitution were divided on whether to require members of Congress to take an oath of office. Representing a political compromise on the issue, the Constitution requires all Senate and House members to take an oath to support the Constitution before assuming office. But the framers left the substance and administration of the oath up to Congress.

Congress put the speaker of the House in charge of administering the oath to incoming House members and first specified its text in 1789. The Oath Act required members of Congress to "solemnly swear or affirm" support of the Constitution.

Historically, the speaker administered the oath to new House members state by state. This meant that each state's newly elected representatives stood alone in front of Congress. However, in 1929, House Speaker Nicolas Longworth changed tradition so that all new members were sworn in at the same time.



Representative-elect Adelita Grijalva, D-Ariz., speaks at the Capitol in Washington on Oct. 15, 2025.

*AP Photo/J. Scott Applewhite*

Longworth did so after Oscar DePriest – the first African American to serve in Congress in the 20th century – won an election in Illinois to replace Rep. Martin B. Madden, who had died of a heart attack. Longworth acted in response to speculation that Southern Democrats would attempt to prevent a Black lawmaker from joining the House. Rather than swearing in members state by state, Longworth swore in all members at once so DePriest was not stopped from taking the oath of office.

Since that time, the speaker has administered the oath of office to all newly elected members of the House as a collective unit.

## **How things work now**

Under current law, the speaker must administer the oath of office to all House members prior to them taking their seats.

Here's how this has worked over the past few decades:

After the House elects a speaker, the member with the longest continuous service in the House – called the dean of the House – administers the oath to the speaker. Then the speaker administers the oath to the rest of the members all together as a mark of a new Congress.

The idea is that despite partisan differences, every legislator commits in front of the others to uphold the Constitution.

But occasionally, either because of illness, a special election or other circumstances, a newly elected member of Congress can't take the oath with everyone else. When that happens, that person is sworn in at a later date.

On Sept. 9, 2025, for example, Democrat James Walkinshaw won a special election to succeed the late Gerry Connolly, who died in office while representing Virginia's 11th congressional district. Johnson swore Walkinshaw in the next day.

While the speaker has the responsibility for administering the oath, the House may adopt a resolution to designate a judge or House member selected by the speaker to do the job for him.

In 1999, for example, Speaker Dennis Hastert designated retired California Judge Ellen Sickles James to administer the oath to Rep.-elect George Miller.

Regardless of who swears into office a member of Congress who could not attend the collective ceremony, the administration of the oath has traditionally occurred on days in which the House is session. But it does not have to be that way.

The law is ambiguous on when the oath is administered.

And House speakers have not always acted swiftly. In spring 2021, for instance, Speaker of the House Nancy Pelosi waited 25 days before administering the oath to Republican Rep.-elect Julia Letlow. That's because the House did not have a session scheduled immediately following Letlow's election.

Johnson has referred to this particular delay as the "Pelosi precedent," setting a standard practice of the speaker waiting to administer the oath until Congress is in session.



Rep.-elect Adelita Grijalva greets supporters on Nov. 1, 2025, in Tucson, Ariz.

*Rebecca Noble/Getty Images*

## **Why does it matter?**

The delay in administering Grijalva the oath is the longest in modern history.

While Grijalva waits, she does not have access to the resources typically provided to members of the House to help them perform their jobs, including an operating budget for her offices or even the ability to log in to key databases.

This means Grijalva is limited in her ability to represent her over 800,000 constituents.

She describes her current situation as “having the title but none of the job.”

Grijalva, Arizona Attorney General Mayes and congressional Democrats accuse the speaker of playing politics. But history and the law suggest that may be Johnson’s prerogative until the government reopens.

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