

Sec. 5—Powers and Duties of the Houses

Cls. 1–4—Judging Elections

ate provide for the ascertainment of a quorum only by a roll call,⁴⁰⁵ but in a few cases it has held that if a quorum is present, a proposition can be determined by the vote of a lesser number of Members.⁴⁰⁶

Rules of Proceedings

In the exercise of their constitutional power to determine their rules of proceedings, the houses of Congress may not “ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house. . . . The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.”⁴⁰⁷ If a rule affects private rights, however, its construction becomes a judicial question.

In *United States v. Smith*,⁴⁰⁸ the Court held that the Senate’s reconsideration of a presidential nominee for chairman of the Federal Power Commission, after it had confirmed him and he had taken the oath of office, was not warranted by its rules and did not deprive the appointee of his title to the office. In *Christoffel v. United States*,⁴⁰⁹ a sharply divided Court upset a conviction for perjury in a federal district court of a witness who, under oath before a House committee, denied any affiliation with Communist programs. The reversal was on the ground that, because a quorum of the committee, although present at the outset, was not present at the time of the alleged perjury, testimony before it was not before a “competent tribunal” within the sense of the District of Columbia Code.⁴¹⁰ Four Justices, in an opinion by Justice Jackson, dissented, arguing that, under the rules and practices of the House, “a quorum once established is presumed to continue unless and until a point of no quorum is raised” and that the Court was, in effect, invalidating

⁴⁰⁵ Rule V.

⁴⁰⁶ 4 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 2910–2915 (1907); 6 CANNON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 645, 646 (1936).

⁴⁰⁷ *United States v. Ballin*, 144 U.S. 1, 5 (1892). The Senate is “a continuing body.” *McGrain v. Daugherty*, 273 U.S. 135, 181–82 (1927). Hence its rules remain in force from Congress to Congress except as they are changed from time to time, whereas those of the House are readopted at the outset of each new Congress.

⁴⁰⁸ 286 U.S. 6 (1932).

⁴⁰⁹ 338 U.S. 84 (1949).

⁴¹⁰ 338 U.S. at 87–90.