

POWERS AND DUTIES OF THE HOUSES

Power To Judge Elections

Each House, when judging elections under this clause, acts as a judicial tribunal, with broad power to compel attendance of witnesses. For instance, in the exercise of its discretion, it may issue a warrant for the arrest of a witness to procure his testimony even if the witness was not previously subpoenaed, if there is good reason to believe that otherwise such witness would not be forthcoming.³⁹⁷ It may investigate expenditures made to influence nominations at a primary election,³⁹⁸ and it may punish perjury committed in testimony regarding a contested election, even if such testimony is before a notary public.³⁹⁹ The Senate was allowed to inquire into the legality of an election despite having denied the person in question the ability to take the oath of office;⁴⁰⁰ and such refusal did not unlawfully deprive the state that elected such person its equal suffrage in the Senate.⁴⁰¹

“A Quorum To Do Business”

For many years the view prevailed in the House of Representatives that it was necessary for a majority of the Members to vote on any proposition submitted to the House in order to satisfy the constitutional requirement for a quorum. Consequently, it was a common practice for the opposition to break a quorum by refusing to vote. This was changed in 1890 in a ruling made by Speaker Reed and later embodied in Rule XV of the House, that Members present in the chamber but not voting would be counted in determining the presence of a quorum.⁴⁰² The Supreme Court upheld this rule in *United States v. Ballin*,⁴⁰³ saying that the capacity of the House to transact business is “created by the mere presence of a majority,” and that since the Constitution does not prescribe any method for determining the presence of such majority, “it is therefore within the competency of the House to prescribe any method which shall be reasonably certain to ascertain the fact.”⁴⁰⁴ The rules of the Sen-

³⁹⁷ *Barry v. United States ex rel. Cunningham*, 279 U.S. 597, 616 (1929).

³⁹⁸ 6 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 72–74, 180 (1936).
Cf. *Newberry v. United States*, 256 U.S. 232, 258 (1921).

³⁹⁹ *In re Loney*, 134 U.S. 372 (1890).

⁴⁰⁰ *Barry v. United States ex rel. Cunningham*, 279 U.S. 597, 614 (1929).

⁴⁰¹ 279 U.S. at 615. The existence of this power in both houses of Congress does not prevent a state from conducting a recount of ballots cast in such an election any more than it prevents the initial counting by a state. *Roudebush v. Hartke*, 405 U.S. 15 (1972).

⁴⁰² HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 2895–2905 (1907).

⁴⁰³ 144 U.S. 1 (1892).

⁴⁰⁴ 144 U.S. at 5–6.