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Questions of Privilege in the House

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The House of Representatives distinguishes between privileged business and questions of privilege. *Privileged business* relates to the order or priority of business before the House and is defined in House rules and precedents as business that has precedence over the regular order of business and so may supersede or interrupt other matters that might be called up or pending before the House. *Questions of privilege* constitute one form of privileged business. Clause 1 of House Rule IX recognizes two kinds of questions of privilege: *questions of the privileges of the House* and *questions of personal privilege*.¹

Questions of the Privileges of the House

Under Rule IX, clause 1, questions of the privileges of the House are “those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.” For example, questions relating to the seating of Members and the organization of the House at the beginning of a Congress have been held to raise questions of the privileges of the House, as have questions relating to the health and safety of Members and staff. Other subjects giving rise to questions of the privileges of the House include the presence on the House floor of unauthorized persons, the conduct of those in the press gallery, the integrity of the *Journal*, the protection of House records and files, the accuracy of House documents and records, the integrity and regularity of an electronic vote, and the attempted bribery or corruption of Members.

The Speaker determines whether a question that a Member has raised does in fact qualify under the House’s precedents as a question of the privileges of the House. Two of the general principles that guide the Speaker in making these determinations are stated in *House Practice*. First, a question of the privileges of the House “may not be raised to effect a change in the rules of the House or their interpretation;”² and second, a Member “may not by raising a question of the privileges of the House under Rule IX thereby attach privilege to a question not otherwise in order under the rules of the House”³ (in other words, make a question a matter of privileged business).

Questions of Personal Privilege

Clause 1 of Rule IX defines questions of personal privilege as “those affecting the rights, reputation, and conduct” of Members, Delegates, or the Resident Commissioner individually in their representative capacity. Under this rule, a Member may rise to a question of personal privilege on the floor to respond to criticism of integrity specifically in relation to his or her representative capacity. Again, it is the Speaker who determines whether an allegation or statement gives rise to a question of personal privilege. According to *House Practice*, the allegation or statement must refer to an individual Member and must reflect directly on the Member’s integrity or reputation. “Mere statements of opinion about or general criticism of his actions as a Member ... or his voting record or views ... do not constitute grounds for a question of personal privilege.”⁴

Members have raised questions of personal privilege to respond to allegations about matters such as misuse of public funds, conflicts of interest, abuse of the franking privilege, corruption and

¹ For more information see Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr. *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2017), chapter 42, pp. 729-754 (cited in this report as *House Practice*).

² *House Practice*, chapter 42, §3, p. 736.

³ *Ibid.*, chapter 42, §3, p. 733.

⁴ *Ibid.*, chapter 42, §16, p. 749.

bribery, criminal conspiracy or perjury, violation of the securities laws, and knowingly making a false statement with the intent to deceive. Members may rise to questions of personal privilege to respond to such public criticisms, whether made by other Members or, for example, in private publications. A question of personal privilege, however, “may not be based on language uttered on the floor of the House in debate,” according to *House Practice*, because House rules provide a different recourse for such a case: a timely demand that the objectionable words be taken down.⁵

Floor Action on Questions of Privilege

A Member raises a *question of the privileges of the House* in the form of a resolution. The Member rises on the floor and states, “Mr. Speaker, I rise to a question of the privileges of the House, and I offer a resolution which I send to the Clerk’s desk.” The text of the resolution is read. If it is the majority leader or the minority leader who offers the resolution, the Speaker immediately rules as to whether it constitutes a valid question of privilege. If the question is raised by any other Member, consideration of it may be deferred until a time and place within the next two legislative days that the Speaker designates in the legislative schedule. When that time arrives, the Speaker then decides whether the resolution raises a valid question of privilege.

If the Speaker determines that the resolution does raise a valid question of privilege, the House proceeds to consider the resolution under the one-hour rule, with the time for debate equally divided between the resolution’s proponent and either the majority leader or the minority leader, as the Speaker determines. The House may agree to order the previous question on the resolution; if so, the House proceeds to vote on the resolution without amendment or further debate. If the previous question is not ordered, debate may continue under the one-hour rule, and the Member controlling the time may propose an amendment to the resolution. Motions to table or refer the resolution, or to postpone its consideration, are also in order.

A Member raises a *question of personal privilege* simply by stating that he or she is rising on the floor for that purpose. A question of personal privilege is not raised by resolution. The Speaker then asks the Member to explain the grounds on which the question is based. If the Speaker determines that the Member has raised a valid question of privilege, that Member is recognized immediately to speak for one hour. After this hour for debate, the House takes no further action on the matter. No vote occurs, because there is no question for the House to decide.

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Acknowledgments

This report was written by James V. Saturno. The analysts listed in the Key Policy Staff table are available to answer questions on the topic.

⁵ *Ibid.*, chapter 42, §17, p. 749. See CRS Report R45866, *Words Taken Down: Calling Members to Order for Disorderly Language in the House*.

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