

Oath of Office vs. the Pledge

By Larry Witner and Ron Washburn

Abstract

All members of Congress take an oath of office to support the Constitution. Some of them make a pledge to Americans for Tax Reform (Grover Norquist, president) to oppose tax increases. For reasons stated in the article, we contend that the pledge has no force and effect and is not binding on members of Congress.

The article identifies and numbers 8 topics. This outline-type format helps a) to organize the subject matter, b) to highlight issues, and c) to reduce the word count as we don't have to worry about smooth transitions.

Oath of Office vs. the Pledge

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All members of Congress (hereafter “Members”) take an oath of office to support the Constitution. Some Members make a pledge to oppose tax increases. The oath of office is required by the Constitution (Article 6, Clause 3). The pledge is promoted by Americans for Tax Reform (Grover Norquist, president), a private organization.

In the 112th Congress serving in years 2011 and 2012,

- out of 435 members of the House, 238 signed the pledge,
- out of 100 members of the Senate, 41 signed the pledge.

The pledge conflicts with the oath of office. The authors contend that, if the pledge is made before the oath of office, the pledge is superseded by the oath of office. If the pledge is made after the oath of office, the pledge causes Members to violate the oath of office. In either case, the pledge has no force and effect and is not binding on Members.

At the start of each new Congress, in January of every odd-numbered year, newly elected or re-elected Members – the entire House and one-third of the Senate – take an oath of office. Members swear (or affirm):

- to support and defend the Constitution,
- to undertake this obligation without any mental reservation, and
- to well and faithfully discharge the duties of their office.

1) The pledge is a unilateral (one-way) promise. As such, the pledge is not legally enforceable. Nevertheless, Americans for Tax Reform contend that signers of the pledge are bound by conscience to oppose tax increases. If Members violate the pledge, they are subject to discipline at the ballot box.

2) The oath of office is part of bilateral (two-way) promises. More specifically, the oath of office is a term (condition) of employment. Consequently, the oath of office is part of the employment contract. If Members honor a pledge that violates the oath of office, Members violate their employment contract. In this case, Members are subject to discipline by Congress.

The following discussion describes how the pledge causes Members to violate the oath of office.

3) The oath of office allows members of Congress to be unfettered and to freely exercise their judgment as to what is best for their constituents and the nation. Members can change their minds as circumstances change.

The pledge asks members to oppose tax increases in all circumstances. The pledge, then, fetters members and does not allow them to freely exercise their judgment. Members cannot change their minds as circumstances change.

4) The oath of office obligates Members to “well and faithfully discharge the duties of [their] office.” Such duties are expressed in the Constitution (Article 1, Section 8). As the following examples reveal, the pledge ties the hands of Members, thereby impeding them from discharging their duties. The pledge, then, causes Members to violate their oath of office.

Consider the duty of Members to represent their constituents. According to polls, a majority of Americans want taxes to go up for well-off individuals. If Members honor the pledge, they will oppose such tax increases. In so doing, Members will not represent their constituents. Thus, the pledge impedes Members from discharging their duties.

Consider the duty of Members to make laws, including revenue laws. Ordinarily, wars require additional revenue (i.e., more taxes). If Members honor the pledge, they will oppose tax increases. In so doing, they jeopardize the war effort. Thus, the pledge impedes Members from discharging their duties.

Consider the duty of Members to prepare a budget. A particular budget may set spending goals that require additional revenue (i.e., more taxes). If Members honor the pledge, they will oppose tax increases. In so doing, they jeopardize the budgetary process. Thus, the pledge impedes Members from discharging their duties.

Consider the duty of Members to raise and support an army and navy. Such an endeavor may require additional revenue (i.e., more taxes). If Members honor the pledge, they will oppose tax increases. In so doing, they jeopardize military preparedness. Thus, the pledge impedes Members from discharging their duties.

Consider the duty of Members to levy and collect taxes. Tax revenues fund various government functions (e.g., Department of Defense, Department of Education). If Members honor the pledge, they will oppose tax increases. In so doing, they jeopardize funding of government functions. Thus, the pledge impedes Members from discharging their duties.

If the pledge has force and effect, it renders superfluous the duty of Members to levy taxes. That is, if Members oppose tax increases in all circumstances, the Constitutional obligation to levy taxes is meaningless. If the pledge contradicts or undermines the Constitution, the pledge has no force and effect.

Consider the duty of members of Congress to deal with the national debt (i.e., debt ceiling). If Members honor the pledge, they will oppose tax increases. In so doing, they limit their ability to reduce the national debt.

In fact, if Members honor the pledge, they may increase the national debt. For instance, if money is needed to improve homeland security, it cannot be raised through taxes. Instead, it must be raised through borrowing. If honoring the pledge limits the ability of Members to deal with the national debt, the pledge impedes Members from discharging their duties.

5) According to the oath of office, Members undertake their obligations “without any mental reservation.” The pledge is a mental reservation. If Members honor the pledge, they oppose tax increases in all circumstances. In so doing, they undertake their obligations with preconceived notions (mental reservations). In this regard, if Members honor the pledge, they violate the oath of office.

6) Because the pledge represents a mental reservation, the pledge creates a conflict of interest. Specifically, if Members honor the pledge, they will perform their duties in a manner prohibited by the oath of office. In this case, the oath of office supersedes the pledge.

7) According to the concept of public trust, officials must safeguard and respect the authority and power that the public has entrusted to them. Even though lobbyists and special interests attempt to influence Members, Members must represent their constituents and the nation. If Members honor a pledge that furthers the cause of Americans for Tax Reform, rather than the cause of constituents and the nation, Members violate the public trust.

8) Some would argue that, if Members honor the pledge in violation of the oath of office, they obstruct the work of Congress. This, by definition, is contempt of Congress.

As the foregoing analysis reveals, the pledge has no force and effect and is not binding on Members because, among other things, the pledge causes Members to violate the oath of office.