

Chapter 34

Office of Speaker

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Research References

- 1 Hinds §§ 186-234; 2 Hinds §§ 1307-1412
- 6 Cannon §§ 23, 24, 247-282
- Deschler Ch 6 §§ 1-14
- Precedents (Wickham) Ch 1 §§ 4.1, 4.2; Precedents (Wickham) Ch 6 §§ 4.2, 4.3, 5.5
- Manual* §§ 621-639, 970

§ 1. Role of Speaker

The Constitution prescribes only that the Speaker be chosen by the House and does not outline the duties of the office. U.S. Const. art. I, § 2. By law and by House rules, the Speaker is the presiding officer of the House and is charged with numerous duties and responsibilities. As the presiding officer of the House, the Speaker maintains order, manages its proceedings, and governs the administration of its business. *Manual* § 622; Deschler Ch 6 §§ 2-8. The major functions of the Speaker with respect to the consideration of measures on the floor include recognizing Members who seek to address the House (*Manual* § 949), construing and applying the House rules (*Manual* § 627), and putting the question on matters arising on the floor to a vote (*Manual* § 630).

The Speaker's role as presiding officer is an impartial one, and the Speaker's rulings serve to protect the rights of the minority. 88-1, June 4, 1963, pp 10151-65. In seeking to protect the interests of the minority, the Speaker has even asked unanimous consent that an order of the House be vacated where the circumstances so required. 89-1, May 18, 1965, p 10871.

§ 2. Term of Office; Vacancy

Term Limit

The Speaker's term of office begins when the oath of office is taken, which immediately follows the election of the Speaker and opening remarks. The term ends on the expiration of the Congress in which such individual was elected, unless sooner terminated by resignation, death, or removal from office. Deschler Ch 6 § 2. During the 104th through 107th Congresses, the Speaker's term of office was limited by standing rule to four consecutive Congresses. That rule was repealed in the 108th Congress. *Manual* § 635a.

The House does not formally accept the resignation of a Speaker. 1 Hinds §§ 225, 232; Deschler-Brown-Johnson Ch 37 § 9; 114-1, Oct. 29, 2015, pp 16821, 16822.

Vacancy

The Office of Speaker may be declared vacant by resolution, which may be offered as a question of the privileges of the House. 118-1, Oct. 3, 2023, p ____; 6 Cannon § 35. During the 116th and 117th Congresses, clause 2(a)(3) of rule IX provided that such resolutions would only be privileged if offered at the direction of a party caucus or conference, but that rule was repealed in the 118th Congress. *Manual* § 699. Under clause 8(b)(3) of rule I, the Speaker is required to deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker. *E.g.*, 118-1, Jan. 9, 2023, p ____.

Upon the adoption of a resolution declaring a vacancy in the Office of Speaker, the Chair announces the vacancy and lays before the House a communication from the Clerk notifying the House of the first name on the list provided by the Speaker under clause 8(b)(3) of rule I. When this rule was utilized in the 118th Congress, the Member named first on the list then took the Chair, announced that he was acting as Speaker pro tempore pursuant to clause 8(b)(3) of rule I, informed the House that under the rule—pending the election of a Speaker (or Speaker pro tempore)—he may exercise all authorities of the Office of Speaker that are necessary and appropriate toward the end of such election, and promptly exercised his authority by declaring a recess subject to the call of the Chair pursuant to clause 12(a) of rule I (in order to allow the parties to meet in caucus or conference). 118-1, Oct. 3, 2023, p _____. For more on the powers and authorities of a Speaker pro tempore acting pursuant to clause 8(b)(3) of rule I, see § 6, *infra*.

A vacancy in the Office may exist by reason of the physical inability of the Speaker to discharge the duties of the Office. Clause 8(b)(3)(C) of rule I.

§ 3. Election

Speaker Chosen from Members

Article I, section 2 of the Constitution directs that the House choose its Speaker and other officers. The Speaker is the only House officer who traditionally has been chosen from the sitting membership of the House. *Manual* § 26. The Constitution does not limit eligibility to that class, but the practice has been followed invariably. The Speaker's term of office usually corresponds with the individual's term of office as a Member, whereas the other House officers continue in office "until their successors are chosen and qualified." Clause 1 of rule II; 1 Hinds § 187.

Nomination and Vote

The general practice for the election of Speaker begins with nominations from each party caucus followed by a *viva voce* vote of the Members-elect. However, other Members may place additional names in nomination. See, *e.g.*, 114-1, Jan. 6, 2015, p 30. Relying on the Act of June 1, 1789, the Clerk recognized for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party. 2 USC § 25; *Manual* § 27; Precedents (Wickham) Ch 1 § 4.1.

Under the modern practice, the Speaker is elected by a majority of Members-elect voting by surname, a quorum being present. *Manual* § 27; 1 Hinds § 216; 6 Cannon § 24; 118-1, Jan. 6, 2023, p _____. Delegates-elect and the Resident Commissioner-elect are ineligible to vote in the election of Speaker. Precedents (Wickham) Ch 1 § 4.2. The Clerk appoints tellers for the election. However, the House, and not the Clerk, decides by what method it shall elect. 1 Hinds § 210. For former practices relating to the election of the Speaker, see *Manual* § 27; 1 Hinds §§ 212, 214, 218; 8 Cannon § 3383.

If the House fails to elect a Speaker on the first ballot, the Clerk may recognize Members-elect for further nominations, which may include individuals previously nominated. 118-1, Jan. 3, 2023, p _____. In the 118th Congress, the election of Speaker proceeded to 15 ballots before a Speaker was elected (118-1, Jan. 6, 2023, p _____), and a subsequent election for Speaker in the same Congress following a vacancy in the Office of Speaker

proceeded to four ballots (118-1, Oct. 25, 2023, p ____). Prior to that Congress, the most recent multi-ballot Speaker election (nine ballots) occurred in 1923. 6 Cannon § 24.

In two instances the House agreed to choose, and subsequently did choose, a Speaker by a plurality of votes but confirmed the choice by majority vote. In 1849 the House had been in session 19 days without being able to elect a Speaker, no candidate having received a majority of the votes cast. The voting was *viva voce*, each Member responding to the call of the roll by naming the candidate for whom he voted. Finally, after the fifty-ninth ballot, the House adopted a resolution declaring that a Speaker could be elected by a plurality. 1 Hinds § 221. In 1856 the House again struggled over the election of a Speaker. Ballots numbering 129 had been taken without any candidate receiving a majority of the votes cast. The House then adopted a resolution permitting the election to be decided by a plurality. 1 Hinds § 222. On both of these occasions, the House subsequently ratified the plurality election by a majority vote.

§ 4. Jurisdiction and Duties; Rulings

The Speaker presides over the business of the House. In executing the duties of the Office, the Speaker:

- Calls the House to order and announces approval of the Journal. *Manual* §§ 621, 622.
- Refers bills and other matters to committee. *Manual* § 816.
- Disposes of business on the Speaker's table. *Manual* §§ 873-875.
- Designates Speakers pro tempore, and appoints chairs of the Committee of the Whole. *Manual* §§ 632, 970.
- Recognizes Members. Deschler Ch 6 §§ 3.16-3.23.
- States a question in prescribed form. *Manual* § 630.
- Supervises the timing of debate and other proceedings in the House. Deschler Ch 6 § 3.25.
- Rules on points of order and responds to parliamentary inquiries. Deschler Ch 6 § 3.
- Makes appointments pursuant to statute, House rules, and House resolutions. Deschler Ch 6 § 6. For appointments to committees, see COMMITTEES.
- Certifies to a U.S. Attorney persons found to be in contempt of a House committee. Deschler Ch 6 § 3.40.
- Declares the House in recess in the event of an emergency pursuant to the inherent power of the Office, pursuant to clause 12 of rule I, or pursuant to a House resolution authorizing such action. Deschler-Brown-Johnson Ch 39 § 2; see RECESS.

- Convenes the House in a place at the seat of government other than the Hall of the House if it is in the public interest. Clause 12(d) of rule I; Deschler-Brown-Johnson Ch 40 § 2.
- Changes the convening time (within constitutional limit) during an adjournment of not more than three days, in the case of imminent impairment of the place of reconvening. Clause 12(c) of rule I; Deschler-Brown-Johnson Ch 40 § 1.
- Changes the convening time (within constitutional limit) during an adjournment of not more than three days, if the public interest so warrants. Clause 12(e) of rule I.
- Signs various documents, including warrants and subpoenas. Clause 4 of rule I.
- Makes preliminary decisions as to questions of privilege. 3 Hinds §§ 2649, 2650, 2654.
- Determines the presence of a quorum, conducts quorum counts, and counts certain votes. *Manual* §§ 55, 630, 810, 1012; 4 Hinds § 2932.
- Announces the absence of a quorum without unnecessary delay. 6 Cannon § 652.
- Maintains order in debate. *Manual* § 960.
- Administers censure by direction of the House. 6 Cannon §§ 236, 237.
- Designates Members to travel on official business of the House. *Manual* § 636.
- Appoints Members to conference committees. *Manual* §§ 536, 637.
- Rules on the validity of conference reports. *Manual* § 628; 5 Hinds §§ 6409-6414, 6416; 8 Cannon §§ 3256, 3264.
- Declares the House adjourned when the hour previously fixed for adjournment arrives. 5 Hinds § 6735.
- Approves assignment of leadership staff to the floor. Clause 2(a) of rule IV.
- Administers and supervises the audio-visual broadcasting of floor proceedings. Rule V.

Many matters have been held to be beyond the scope of the Speaker's responsibility under the rules. The Speaker does not:

- Construe the legislative or legal effect of a pending measure or comment on the merits thereof. *Manual* § 628; Deschler Ch 6 §§ 4.20, 4.21.
- Determine whether Members have abused leave to print. *Manual* § 628.
- Respond to hypothetical questions, render anticipatory rulings, or decide a question not directly presented by the proceedings. *Manual* § 628; Deschler Ch 6 §§ 4.13, 4.14; Precedents (Wickham) Ch 6 § 4.2.
- Determine questions that are within the province of the chair of the Committee of the Whole. *Manual* § 971; 5 Hinds § 6987.
- Pass on the constitutional powers of the House, the constitutionality of House rules, or the constitutionality of amendments offered to pending bills. *Manual* § 628.

- Resolve questions on the consistency of an amendment with the measure to which it is offered, or with an amendment that already has been adopted, or on the consistency of proposed action with other acts of the House. *Manual* §§ 466, 628; 5 Hinds § 5781.
- Answer inquiries as to the availability of amendments not yet offered. Deschler Ch 27 § 3.37.
- Decide whether a Member should be allowed to display an exhibit in debate, except under the Speaker's duty to preserve decorum. *Manual* § 622; Deschler Ch 6 § 4.10.
- Rule on the propriety of words taken down before they are read to the House. Precedents (Wickham) Ch 6 § 4.3.
- Rule on the sufficiency or effect of committee reports or whether the committee has followed instructions. *Manual* § 628; 2 Hinds § 1338; 4 Hinds §§ 4404, 4689; Deschler Ch 6 §§ 4.22, 4.23.
- Rule on the propriety or expediency of a proposed course of action. *Manual* § 628.
- Construe the consequences of a pending vote. Deschler Ch 6 §§ 4.27, 4.28.
- Determine whether a Member should be censured or whether an office held is incompatible with membership in the House, these being matters for the House to decide. 2 Hinds § 1275; 6 Cannon § 253.
- Look behind the unambiguous language of a special order of business adopted by the House when interpreting its language. *Manual* § 628.

For jurisdiction and duties of the chair of the Committee of the Whole, see COMMITTEES OF THE WHOLE.

§ 5. Participation in Debate and Voting

Debate

Although the Speaker's usual role is that of the presiding officer, there have been many instances in which the Speaker has made a statement from the Chair or in which the Speaker has relinquished the Chair and participated in the debate on the floor. *Manual* § 358. The Speaker may take the floor for purposes of debate both in the House and in the Committee of the Whole. If the Speaker is to participate in debate on the floor of the House, another Member is called to the Chair to serve as Speaker pro tempore. *Manual* § 358; 2 Hinds § 1360.

Voting

Under the early rules of the House, the Speaker was barred from voting except under certain circumstances. 5 Hinds § 5964. Today, the Speaker has the same right as other Members to vote but only occasionally exercises it. *Manual* § 631. The Speaker may vote on any matter that comes before the House, and is required to vote where such vote would be decisive or where the House is engaged in voting by ballot. Clause 7 of rule I; *Manual* § 631.

The duty of giving a decisive vote may be exercised after the intervention of other business, if a correction of the roll shows a condition wherein such vote would be decisive. 5 Hinds §§ 6061-6063. On an electronic vote, the Chair may direct the Clerk to record the Speaker's vote and verify that instruction by submitting a vote card. Precedents (Wickham) Ch 6 § 5.5. Resigning Speakers have voted in the election of their successors. 101-1, June 6, 1989, p 18000; 114-1, Oct. 29, 2015, p 16821.

§ 6. The Speaker Pro Tempore

Appointment or Election

The Speaker may appoint a Speaker pro tempore. Such an appointment may not exceed three legislative days, except that in the case of illness the Speaker's appointment may extend to 10 days with the approval of the House. Clause 8 of rule I. For longer periods, a Speaker pro tempore is elected by the House. *Manual* § 632. A Member sometimes is appointed Speaker pro tempore by the Speaker and subsequently elected by the House. Deschler Ch 6 § 12.76. If the Speaker appoints a Speaker pro tempore only for purposes of signing enrolled bills and joint resolutions, such an appointment may extend for a "specified period of time" with the approval of the House. Clause 8 of rule I. In recent Congresses, this period of time has covered an entire Congress. See, *e.g.*, 111-1, Jan. 6, 2009, p 25. The Speaker may appoint alternate Members to sign enrolled bills. *Manual* § 634.

Under clause 8(b)(3) of rule I, adopted in the 108th Congress, the Speaker is required to deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker. In the absence of those individuals, the Clerk would preside pursuant to clause 2(a) of rule II.

A Speaker pro tempore is elected pursuant to resolution. Deschler Ch 6 § 14.1. The resolution is typically offered by the chair of the majority party caucus or by the Majority Leader. Deschler Ch 6 § 14. An appointed Speaker pro tempore leaves the Chair pending the offering of a resolution electing such individual as Speaker pro tempore. Deschler Ch 6 §§ 11.7, 14.1.

In recent Congresses, special orders of business that contemplate a series of pro forma sessions have typically included authority for the Speaker to appoint Speakers pro tempore "as though under clause 8(a) of rule I" for the entire duration of the adjournment period (effectively waiving the three legislative day limit). See, *e.g.*, 113-1, H. Res. 438, Dec. 12, 2013, p 18453. Such authority was expanded in the 118th Congress in the form

of standing authority to make such appointments during any “district work periods” designated by the Speaker. 118-1, Jan. 9, 2023, p ____.

Although clause 8 of rule I uses the term “appoint,” a Speaker pro tempore appointed under this rule has also been referred to as a “designated” Speaker pro tempore, and the two terms are used interchangeably. See Precedents (Wickham) Ch. 6 § 8.

Oath of Office

The oath of office is administered to an elected Speaker pro tempore, but not to a designated Speaker pro tempore or to a Speaker pro tempore acting pursuant to clause 8(b)(3) of rule I. Deschler Ch 6 § 11; 118-1, Oct. 3, 2023, p _____. The oath is administered to an elected Speaker pro tempore by the Speaker, by the Dean of the House, or by another Member. Deschler Ch 6 §§ 11.4-11.6.

Who May Serve

Under clause 8 of rule I, the Speaker pro tempore must be a Member of the House. *Manual* § 632. Such Member is virtually always a member of the majority party. Deschler Ch 6 § 10. However, the Dean of the House also has served in that capacity. 89-1, Jan. 19, 1965, p 946. On rare, ceremonial occasions the Minority Leader has been designated Speaker pro tempore. Deschler Ch 6 § 12.7.

Powers and Functions; Appointed or Elected

The Speaker pro tempore, as the occupant of the Chair, exercises many functions that normally fall within the purview of the Speaker. Routine functions that are within the scope of authority of a Speaker pro tempore include calling the House to order, making various announcements, answering parliamentary inquiries, putting the question, counting for a quorum, ruling on points of order, and designating another Speaker pro tempore. Deschler Ch 6 §§ 9, 10.

The authority of a Speaker pro tempore to exercise certain powers depends on whether such individual is designated under clause 8(a) of rule I, designated and approved under clauses 8(b)(1) or (2) of rule I, or elected. The powers of a designated Speaker pro tempore, compared with those of an elected Speaker pro tempore, are relatively limited. Deschler Ch 6 §§ 10, 14.

Absent unanimous consent or specific House approval, a designated Speaker pro tempore may not:

- Administer the oath of office to a Member-elect. Deschler Ch 6 § 12.8.
- Appoint conferees or make appointments of additional conferees. Deschler Ch 6 §§ 12.9, 12.10.
- Appoint Members to attend a funeral. Deschler Ch 6 § 12.14.

By contrast, an elected Speaker pro tempore may, for example, appoint conferees, administer the oath of office to a Member-elect, and preside at a joint session of Congress. Deschler Ch 6 §§ 12.8, 14, 14.8. Until 1983, unanimous consent was required for a Speaker pro tempore to spread upon the Journal a veto message from the President. Deschler Ch 6 § 12.11. Current practice allows even a designated Speaker pro tempore this authority without unanimous consent.

Powers and Functions; Acting Under Clause 8(b)(3) of Rule I

When the Office of Speaker is vacant, the Member acting as Speaker pro tempore under clause 8(b)(3) of rule I may, pending the election of a Speaker or a Speaker pro tempore, exercise all authorities of the Office as may be necessary and appropriate to the end of such election. The rule places both a temporal and a substantive limit on the authority of an acting Speaker pro tempore. The temporal limit is the election of a Speaker or a Speaker pro tempore. The substantive limit is that a Speaker pro tempore acting pursuant to clause 8(b)(3) of rule I can exercise the entirety of the authorities of the Office of Speaker, but only as necessary to the end of the election of a new Speaker or Speaker pro tempore. Thus, the authorities of an acting Speaker pro tempore differ from (but overlap with) the authorities of either an appointed or elected Speaker pro tempore. Accordingly, following a vacancy in the Office of Speaker during the 118th Congress, an acting Speaker pro tempore exercised the following authorities:

- Declaring a recess pursuant to clause 12(a) of rule I. 118-1, Oct. 3, 2023, p ____.
- Recognizing a Member for a unanimous-consent request to change the convening time upon adjournment, and recognizing a Member for a motion to adjourn. 118-1, Oct. 3, 2023, p ____.
- Designating a Speaker pro tempore pursuant to clause 8(a) of rule I.
- Proceeding to the election of a new Speaker and recognizing for nominations. 118-1, Oct. 17, 2023, p ____.

By contrast, he declined to exercise the following authorities:

- Referring measures or executive communications (although they were permitted to be introduced). 118-1, Oct. 3, 2023, p ____.
- Laying before the House messages from the Senate or President. 118-1, Oct. 25, 2023, p ____.