

Interruption at Organization by Messages

§ 8.3 Before the adoption of rules, the Chair received a message from the Senate between the time the yeas and nays were ordered on the previous question and the time the roll was called.

On Jan. 3, 1969,⁽¹²⁾ after the ordering of the yeas and nays on a motion for the previous question, Speaker John W. McCormack, of Massachusetts, received a message from the Senate as to a concurrent resolution to fix the date of the electoral count. Following receipt of that message the roll was called on the pending yea and nay vote.

§ 9. Motions

As previously indicated, the House has before it, following the election of the Speaker, several substantive matters to resolve without the aid of standing rules.⁽¹³⁾ The swearing in of Mem-

bers, the election of officers, and even the adoption of rules themselves necessitate the putting of motions from the floor. Before rules are in effect, motions are governed in their admissibility and effect by precedent and by the general parliamentary law as applied in the House of Representatives.⁽¹⁴⁾ That general authority does not, however, preclude reliance by the Speaker on the rules of past Congresses as a basis for admitting certain motions. For example, the motion to recommit after the ordering of the previous question has been ruled applicable in the House prior to the adoption of rules because it was within the “spirit” of the rules of the past Congress.⁽¹⁵⁾ Therefore, in many instances the use of motions before the adoption of rules resembles more closely their use under the House rules than under Jefferson’s Manual.⁽¹⁾

(as well as on any legislation that may be considered), including debate, withdrawal, amendment, and consideration, raises a variety of procedural questions covered elsewhere (see § 12, *infra*).

12. 115 CONG. REC. 22, 91st Cong. 1st Sess.

13. There are often introduced, before the adoption of standing rules, resolutions relating to the adoption of the rules or to the swearing in of Members or to other organizational business. Action on such resolutions

14. See, in general, 5 Hinds’ Precedents §§ 6757–63; 8 Cannon’s Precedents §§ 3383–86.

15. See § 9.5, *infra*.

1. For motion practice generally, see Ch. 23, *infra*. Ch. 5, *infra*, discusses the applicability of Jefferson’s Man-

There are motions, of regular use in the House, whose admissibility prior to the adoption of rules is unquestioned, since they are authorized by the Constitution:⁽²⁾ the demand for the yeas and nays⁽³⁾ and the motion for a call of the House. The motion to adjourn is likewise admissible before the adoption of rules, either before or after the election of the Speaker; the motion is of standard usage under general parliamen-

ual to the procedure of the House of Representatives.

2. Art. I, §5, clause 3 authorizes one-fifth of those Members present to call for the yeas and nays, and under art. I, §5, clause 1, less than a majority of Members may compel the attendance of absent Members when a quorum is lacking. The question has arisen whether the body of Representatives assembled has all the powers of the "House," as contemplated by the constitutional provisions, before organization is completed. As discussed at 1 Hinds' Precedents §82, however, that body may elect officers and adopt rules under the Constitution and is therefore authorized to follow, before organization is completed, at least those constitutional provisions relating to procedure and to organization.
3. See 1 Hinds' Precedents §91; 5 Hinds' Precedents §§6012-13. For an instance where the Speaker has entertained a second demand for the yeas and nays after being once refused on the same question, before rules adoption, see §9.1, *infra*.

tary law⁽⁴⁾ and is authorized by the Constitution as well.⁽⁵⁾ The House may adjourn for more than one day before the election of the Speaker,⁽⁶⁾ but since a concurrent resolution is necessary to adjourn for more than three days,⁽⁷⁾ the House cannot move to adjourn for more than three days before the Speaker is elected and each House is notified of a quorum in the other.⁽⁸⁾ The motion to adjourn is accorded preferential treatment before the adoption of the rules as well as after.⁽⁹⁾

4. See Jefferson's Manual, *House Rules and Manual* §584 (1973).
5. Art. I, §5, clause 1 authorizes less than a majority of the House to adjourn from day to day.
6. 1 Hinds' Precedents §89
7. U.S. Const. art. I, §5, clause 4. Generally, see Ch. 40, *infra*.
8. Since a message from one House that a quorum has appeared is not delivered in the other until a quorum has appeared there also (1 Hinds' Precedents §126), and the message of a quorum is not sent until after the election of a Speaker (§7.1, *supra*), official consent for adjournment for more than three days could presumably not be obtained until that point in time.
9. See Jefferson's Manual, *House Rules and Manual* §439 (1973), for the parliamentary rule. On occasion, the Clerk presiding at the opening has entertained no other motion than the motion to adjourn (1 Hinds' Precedents §67). On one instance, after

When a motion is made from the floor, it must be read to the House and then put to the question under general parliamentary law as well as under the standing rules of the House.⁽¹⁰⁾ (After the Speaker is elected, he puts motions to the House; while the Clerk is presiding, however, he may decline to put a question to the House, whereupon a Member-elect may put it from the floor.)⁽¹¹⁾ The Speaker must recognize Members proposing motions which are privileged at the stage of organization.⁽¹²⁾

When a Member offers a resolution prior to the adoption of standing rules, he is entitled to one

organization had been completed, the Speaker held the motion to adjourn of higher precedence than the privileged motion to proceed to the election of a new Speaker (8 Cannon's Precedents §2641). The motion cannot, however, defer the right of a Member-elect to take the oath (1 Hinds' Precedents §622).

10. See Jefferson's Manual, *House Rules and Manual* §392 (1973). Under House practice, however, a motion does not require a second as stated in Jefferson's Manual.
11. See 1 Hinds' Precedents §67.
12. 8 Cannon's Precedents §3383. Motions relating to the organization of the House are privileged; an example is the motion to proceed to the election of officers (1 Hinds' Precedents §290).

hour of debate on the resolution;⁽¹³⁾ under general parliamentary law he may yield time for debate to others and still retain the right to resume debate or to move the previous question.⁽¹⁴⁾ The previous question is a standard motion under parliamentary law,⁽¹⁵⁾ and may be moved before the adoption of the rules.⁽¹⁶⁾ However, the 40 minutes of debate allowed by Rule XXVII of the rules, on a question on which there has been no debate, does not apply before the rules are effective.⁽¹⁷⁾ The House may recommit, refer, lay on the table, or refuse to pass on the pending resolution in any shape, under general parliamentary prin-

13. 1 Hinds' Precedents §6759; see also §12.3, *infra*.
14. 8 Cannon's Precedents §3383.
15. See Jefferson's Manual, *House Rules and Manual* §461 (1973). As used in the House, however, the previous question no longer has the purpose stated by Jefferson (*House Rules and Manual* §450 [1973]), to avoid lengthy debate on embarrassing questions or to suppress motions.
16. 5 Hinds' Precedents §6758; 8 Cannon's Precedents §§3383, 3386; §9.3 *infra*.
17. If ordered without previous debate, the previous question allows 40 minutes' debate under Rule XXVII clause 3, *House Rules and Manual* §907 (1973). Prior to rules adoption, the 40 minutes is not in order (8 Cannon's Precedents §3385). See also §9.4, *infra*.

ciples.⁽¹⁸⁾ In allowing the motion to recommit after the previous question has been moved, Speakers have based their rulings not only on the general parliamentary law, but also on the usage of the House of Representatives, including the standing rules of past Congresses;⁽¹⁹⁾ such reliance was necessary to admit the motion to recommit, as Jefferson's Manual does not authorize it after the moving of the previous question.⁽²⁰⁾ If a resolution is recommitted before the adoption of rules, it will be recommitted to a select or special committee appointed by the Speaker.⁽¹⁾

The House may utilize the motion to postpone consideration of a resolution before adoption of rules,⁽²⁾ and it may amend by germane amendment a resolution on which the previous question is rejected.⁽³⁾

On an occasion where the House was voting on the previous

18. See 5 Hinds' Precedents §6758.

19. See 1 Hinds' Precedents §§3383-84; 5 Hinds' Precedents §5604; §9.5, *infra*.

20. See Jefferson's Manual, *House Rules and Manual* §461 (1973).

1. See 5 Hinds' Precedents §5604; 8 Cannon's Precedents §3383. Committees are not constituted before the adoption of rules.

2. See §9.7, *infra*.

3. See §§9.3, 12.6, 12.7, *infra*.

question, the Speaker declined to record the vote of a Member who failed to qualify as being in the Hall and listening when his name was called, before the adoption of rules.⁽⁴⁾

Demand for Yeas and Nays

§9.1 The yeas and nays may not be demanded after they have been once refused on the same question; but before the adoption of the rules a second demand has been entertained where the Speaker was in doubt of the result of a viva voce vote on the question.

On Jan. 3, 1969,⁽⁵⁾ after the yeas and nays were refused on the previous question, a parliamentary inquiry was stated:

MR. GERALD R. FORD [of Michigan]: Is this yea-and-nay vote on the previous question?

THE SPEAKER [John W. McCormack, of Massachusetts]: It is.

MR. FORD: I thank the Chair.

THE SPEAKER: The question is on ordering the previous question.

The question was taken; and the Speaker announced that the yeas appeared to have it.

MR. GROSS:⁽⁶⁾ Mr. Speaker, on that I demand the yeas and nays.

4. 8 Cannon's Precedents §3386.

5. 115 CONG. REC. 29, 30, 91st Cong. 1st Sess.

6. Mr. Harold R. Gross (Iowa).

The yeas and nays were ordered.

§ 9.2 Prior to the adoption of rules, one-fifth of the Members present may order a yea and nay vote pursuant to the Constitution.

On Jan. 4, 1965,⁽⁷⁾ prior to the adoption of standing rules, Speaker John W. McCormack, of Massachusetts, stated in response to a parliamentary inquiry that under the Constitution, it would require one-fifth of the Members present to rise to order a yea and nay vote.

Motions for the Previous Question

§ 9.3 Prior to the adoption of rules, the previous question is applicable in the House; after the previous question has been moved, the resolution before the House is not subject to amendment unless the previous question is rejected.

On Jan. 4, 1965,⁽⁸⁾ prior to rules adoption, Speaker John W. McCormack, of Massachusetts, stated in response to a parliamentary inquiry that if the previous

7. 111 CONG. REC. 19, 89th Cong. 1st Sess.

8. 111 CONG. REC. 19, 89th Cong. 1st Sess.

question was voted down, it would then be in order to offer a proper amendment.

§ 9.4 Prior to the adoption of rules, when the motion for the previous question is moved without debate, the 40 minutes' debate prescribed by House rules during the previous Congress does not apply.

On Jan. 7, 1959,⁽⁹⁾ after the previous question was moved on a House resolution, Mr. Thomas P. O'Neill, Jr., of Massachusetts, arose to state a parliamentary inquiry:

MR. O'NEILL: Mr. Speaker, when the previous order has been moved and there is [sic] no debate, under the rules of the House are we not entitled to 40 minutes debate?

THE SPEAKER:⁽¹⁰⁾ Under the precedents, the 40-minute rule does not apply before the adoption of the rules.

Motion to Recommit

§ 9.5 A ruling to admit the motion to recommit after the ordering of the previous question, before the adoption of rules, was based upon a construction of the standing rules of prior Congresses.

9. 105 CONG. REC. 14, 86th Cong. 1st Sess.

10. Sam Rayburn (Tex.).

On Dec. 7, 1931,⁽¹¹⁾ Mr. Carl E. Mapes, of Michigan, stated a parliamentary inquiry:

I understood the gentleman from North Carolina to say that he would not yield the floor for the purpose of allowing an amendment to his motion. I would like to ask the Speaker if it is not a fact, even though he does not yield the floor for that purpose and the previous question should be ordered on the resolution, that some Member on this side would have the right to move to recommit or move to amend the resolution?

THE SPEAKER:⁽¹²⁾ Within the spirit of the rules of the 71st Congress on the motion to recommit, the Chair thinks that they should have that right.

MR. MAPES: I think the ruling of the Chair is correct. If the Chair will recollect, Speaker Clark, at the beginning of the 63d Congress, ruled to the same effect.

THE SPEAKER: The Chair is familiar with that ruling.⁽¹³⁾

Motion to Amend

§ 9.6 A resolution authorizing the Speaker to administer the oath to a Representative-elect was open to amendment when the House refused to order the previous

11. 75 CONG. REC. 12, 72d Cong. 1st Sess.
12. John N. Garner (Tex.).
13. Speaker Clark's ruling was made on Apr. 7, 1913, 50 CONG. REC. 77, 63d Cong. 1st Sess., and is cited at 8 Cannon's Precedents § 3384.

question thereon, prior to the adoption of rules.

On Jan. 3, 1969,⁽¹⁴⁾ after the House refused to order the previous question on a resolution to authorize the Speaker to administer the oath of office to Member-elect Adam C. Powell, of New York, an amendment was offered providing that the Speaker administer the oath but including several conditions of punishment for acts committed in a prior Congress.

Motion to Postpone

§ 9.7 A motion to postpone consideration of a resolution to a day certain is in order prior to adoption of the rules.

On Jan. 21, 1971,⁽¹⁵⁾ it was moved that an amendment to the rules of the House be considered as read and printed in the Record and that further consideration be put over until the next day. The House agreed to the motion.

Call of the House

§ 9.8 Prior to the adoption of the rules, a motion for a call of the House is in order

14. 115 CONG. REC. 22, 23, 91st Cong. 1st Sess.
15. 117 CONG. REC. 15, 92d Cong. 1st Sess.

when the absence of a quorum is announced; following the establishment of a quorum, further proceedings under the call may be dispensed with by unanimous consent.

On Jan. 21, 1971,⁽¹⁶⁾ before the adoption of rules, a call of the House was ordered in the absence of a quorum. After a quorum of 395 Members had answered to their names, further proceedings under the call were dispensed with by unanimous consent.

§ 10. Adoption of Rules; Applicability

Under the Constitution of the United States, "Each House may determine the Rules of its Proceedings" ⁽¹⁷⁾ The Supreme Court has interpreted this clause to mean that the House possesses nearly absolute power to adopt its own procedural rules. In *United States v Ballin*,⁽¹⁸⁾ judicial inquiry into the validity of a House rule was limited to the question of whether the House possessed the power to adopt the rule. The Court determined the only limita-

tions on that power to be that the rule must not violate constitutional rights, and the method of proceeding must be reasonably related to the desired result. The wisdom or folly of the rule was held not to be subject to judicial scrutiny.

The House, through the rulings of the Speaker, has interpreted its constitutional power to determine its own procedural rules very broadly. Since the late 1800s,⁽¹⁹⁾ the rulings of the Speaker on the subject have consistently embodied the principle that such power must be exercised by each Congress. The procedural rules of the preceding Congress are no longer in effect at the opening session of the new Congress,⁽²⁰⁾ and the House proceeds under general parliamentary law until the rules are adopted.⁽¹⁾ Similarly, Congress may not, by rule or statute, provide that the House is to be governed by certain procedural rules during a future Congress.⁽²⁾ Such

16. 117 CONG. REC. 14, 92d Cong. 1st Sess.

17. U.S. Const. art. I, § 5, clause 2.

18. 144 U.S. 5 (1892).

19. See 5 Hinds' Precedents §§ 6743-6755.

20. 8 Cannon's Precedents § 3383; 5 Hinds' Precedents § 6002.

1. See § 1, supra, and §§ 10.1, 10.2, infra; see also 8 Cannon's Precedents §§ 3383-3386; 5 Hinds' Precedents §§ 6758-6763.

2. See § 1, supra, and § 10.1, infra; see also 1 Hinds' Precedents §§ 187, 210. At one time, the theory that a House