

of Maryland, made the following announcement:

. . . On Wednesday last the majority leader of the Senate informed the Chair that he had, in the name of the Senate, extended an invitation to the Right Honorable Mr. Winston Churchill, Prime Minister of Great Britain, to attend the session of the Senate today at 12:30 o'clock p.m. and address them. Senator Barkley,⁽⁷⁾ on behalf of the Senate, asked me to extend to the Members of the House an invitation to be present in the Senate Chamber today at that time to hear the Prime Minister. Owing to the shortness of the time, it was found impossible to make any formal arrangements. The Chair has informally accepted for the House the invitation of Senator Barkley, and those Members of the House who wish to hear the Prime Minister will form in line in the middle aisle, after the present occupant of the chair and the majority and minority leaders, and proceed to the Senate Chamber.

The House then recessed to attend the joint meeting in the Senate Chamber.

§ 4.7 Pursuant to resolution, the House stands in session while attending the inaugural ceremonies on the east front of the Capitol.

On Jan. 16, 1961,⁽⁸⁾ the House agreed to the following resolution, offered by Mr. John W. McCormack, of Massachusetts:

Resolved, That when the House adjourns on Wednesday, January 18,

7. Sen. Alben W. Barkley (Ky.).

8. 107 CONG. REC. 730, 87th Cong. 1st Sess.

1961, it stand adjourned until 11 a.m. Friday, January 20, 1961; that upon convening at that hour the House proceed to the east front of the Capitol for the purpose of attending the inaugural ceremonies of the President and Vice President of the United States; and that upon the conclusion of the ceremonies the House stand adjourned until Monday, January 23, 1961.

§ 5. Clerk as Presiding Officer; Authority

On the opening day of the first session of a new Congress, the elected Clerk of the preceding Congress calls the House to order and presides until the election of a Speaker.⁽⁹⁾ The main duties of the Clerk at the organization of the House are ascertaining a quorum through a call of the Clerk's roll, and presiding over the election of a Speaker.⁽¹⁰⁾ In current practice, the organizational steps over which the Clerk presides consume only a small portion of opening day. The practice has not always been so, as Clerks have presided at some Congresses for a period of days and even weeks.⁽¹¹⁾

9. 1 Hinds' Precedents §§ 64-65.

10. For a description of the organizational steps over which the Clerk presides, see § 5.1, *infra*. See also 1 Hinds' Precedents § 81. For detail on the preparation of the Clerk's roll, see Ch. 2, *infra*.

11. 1 Hinds' Precedents §§ 65, 67, 70, 204. In those instances, difficulties

The authority of the Clerk to preside at the assembly of a new Congress is derived from custom as well as statutory sources.⁽¹²⁾ Unlike the Speaker, whose term ceases with the assembly of a new Congress, the Clerk continues in office by tradition until the election of new officers.⁽¹³⁾ In early Congresses, the House provided by a special rule that the Clerk should continue in office until another should be chosen,⁽¹⁴⁾ but later constructions determined that one House could not by rule bind its successor.⁽¹⁵⁾ In requiring the Clerk of the preceding House to prepare the roll of Representatives-elect for the new Congress, Title 2 of the United States Code provides for the functioning of the Clerk beyond the term of office for which elected; similarly, the code provides for the Sergeant at Arms, and in his absence the Doorkeeper of the preceding House, to perform the Clerk's functions in the case of vacancy in his office.⁽¹⁶⁾ The Code

in the call of the roll and in the election of the Speaker kept the Clerk in the chair for long periods of time.

12. See also Rule III clause 1, *House Rules and Manual* §637 (1973).
13. 1 Hinds' Precedents §§ 187, 188, 235, 244.
14. 1 Hinds' Precedents §§ 187, 235; 5 Hinds' Precedents § 6743.
15. 5 Hinds' Precedents § 6747.
16. 2 USC § 26. See also § 5.2, *infra*.

also enumerates duties of the Sergeant at Arms, under the direction of the Clerk of the preceding Congress, at the assembly of a new House.⁽¹⁷⁾

At the beginning of early Congresses, the Clerk of the preceding House refused to decide many questions of order, referring them instead to the House.⁽¹⁸⁾ Beginning in 1860, however, Rule III of the House rules⁽¹⁹⁾ took on in substance its present form, authorizing the Clerk to decide questions of order subject to appeal; although not binding while the Clerk is presiding, the rule exerts persuasive effect on the construction of the Clerk's authority to decide points of order.⁽²⁰⁾ As pre-

17. See 2 USC § 79. Like Rule III of the *House Rules and Manual*, § 637 (1973), Rule IV clause 1, § 648, pertaining to the Sergeant at Arms' duties pending the election of a Speaker, and Rule V clause 1 § 651, relating to the Doorkeepers' duties pending the election, are not technically in effect at the time those duties are performed.

18. See 1 Hinds' Precedents §§ 68–72.

19. Rule III clause 1, *House Rules and Manual* § 637 (1973).

20. For the history and effect of the rule, see 1 Hinds' Precedents § 64. When coupled with the former provision that rules of one House applied to the organization of its successor (5 Hinds' Precedents §§ 6743–46), Rule III gave the Clerk explicit authority

siding officer, the Clerk has consistently refused to entertain propositions not consistent with the organization of the House;⁽¹⁾ he has refused, for example, to entertain protests,⁽²⁾ and has declined to hear motions referring a subject to committee⁽³⁾ or relating to contested election cases.⁽⁴⁾

to decide points of order (1 Hinds' Precedents §§76–77). In 1890, however, the theory that one House could by rule bind its successor was overturned (5 Hinds' Precedents §6747).

1. See, in general, 1 Hinds' Precedents §§68–80.

As to the capacity of the House to transact general legislative business while the Clerk is presiding and before the election of a Speaker, the House has determined such procedure to be foreclosed by the Act of 1789, Ch. 1, §2, 1 Stat. 23, as amended, 2 USC §25 (1948), requiring the administration of the oath to the Speaker, Members, and the re-elected Clerk before the House enters into other business. See 1 Hinds' Precedents §§6647–49 (rulings by the House that the Clerk could receive a message from the President but could not read it, as reading the message constituted business). For other rulings on the requirement that legislative business await the election of officers and the swearing in of Members and of the Clerk, see 1 Hinds' Precedents §§130, 241, 243; *contra* (allowing business before the election of the Clerk), 1 Hinds' Precedents §§242, 244, 245.

2. 1 Hinds' Precedents §80.
3. 1 Hinds' Precedents §78.
4. See 1 Hinds' Precedents §67. According to Alexander, *History of Pro-*

The House may, in lieu of having the Clerk preside, choose one of the Members-elect to preside as Chairman until the election of a Speaker.⁽⁵⁾ This method has been taken by the House when organizational business was impeded by the refusal of the Clerk to entertain certain questions or motions.⁽⁶⁾

The Clerk may preside at the opening of a new session of an existing Congress, or even at the beginning of a daily meeting during a session, when the Speaker has died in office,⁽⁷⁾ since the authority of the Speaker *pro tempore*

cedure of the House of Representatives 14 (1916), the Clerk of the House attempted in one instance (cited at 1 Hinds' Precedents §67) to use his powers and duties at the opening of the new Congress to determine which political party would control the House of Representatives. In 1839, Clerk Hugh A. Garland "discovered that by omitting the names of contestants from New Jersey the roll would stand 118 in favor of his own party, a sufficient number to elect a Speaker. Accordingly, when New Jersey was reached in the roll call, Garland cunningly explained that as he had no authority to settle contests he would complete the call and then submit the New Jersey matter to the House for its decision."

5. 1 Hinds' Precedents §§66–67.
6. See 1 Hinds' Precedents §67.
7. See 1 Hinds' Precedents §234.

terminates upon the death of the Speaker.⁽⁸⁾ If the Clerk presides in that situation, he first ascertains the presence of a quorum, and then proceeds immediately to the election of a Speaker.⁽⁹⁾

Clerk as Presiding Officer; Organizational Procedure

§ 5.1 Following opening prayer and before the election of the Speaker at the opening of a new Congress, the Clerk of the preceding Congress takes the following organizational steps: announces the receipt of credentials; causes the roll to be called alphabetically by states to establish a quorum; announces the establishment of a quorum; announces vacancies in the House occurring since national elections.

On Jan. 10, 1967,⁽¹⁰⁾ the Clerk of the 89th Congress, Ralph R. Roberts, of Indiana, announced as follows after the House had been called to order and had heard prayer:

Representatives-elect for the 90th Congress . . . this is the day fixed for the meeting of the 90th Congress.

8. See §§ 6.6, 6.7, *infra*.
9. For the procedure of the election of the Speaker, both at a new Congress and at a new session of the same Congress, see § 6, *infra*.
10. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

As the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect.

Credentials covering the 435 seats in the 90th Congress have been received and are now on file with the Clerk of the 89th Congress.

The names of those persons whose credentials show they were regularly elected in accordance with the laws of the several States and of the United States will be called; and as the roll is called, following the alphabetical order of the States, beginning with the State of Alabama, Representatives-elect will answer to their names to determine whether or not a quorum is present.

The reading clerk will call the roll.

The Clerk called the roll by States and the following Representatives-elect answered to their names: . . .

THE CLERK: The roll call discloses that 434 Representatives-elect have answered to their names.

A quorum is present.

The Clerk will state that credentials are on file showing the election of the Honorable Santiago Polanco-Abreu as Resident Commissioner from the Commonwealth of Puerto Rico.

The Clerk also wishes to announce there is a vacancy in the Second District of Rhode Island occasioned by the recent death of the Honorable John E. Fogarty.

Presiding Officer in Absence of Clerk

§ 5.2 In the absence of both the Clerk of the House and the Sergeant at Arms, the Doorkeeper of the preceding Con-

gress calls the House to order on the opening day of a new Congress.

On Jan. 3, 1947,⁽¹¹⁾ the assembly date of the first session of the 80th Congress, following the death of the Clerk of the House and in the absence of the Sergeant at Arms, the Doorkeeper of the House of Representatives of the 79th Congress, Ralph R. Roberts, of Indiana, called the House to order and directed the call of the roll.⁽¹²⁾

§ 6. Election of the Speaker

Ordinarily, the second order of business at the opening of a new Congress, after the ascertainment of a quorum through the calling of the Clerk's roll, is the election of the Speaker.⁽¹³⁾ Although a mo-

11. 93 CONG. REC. 33, 80th Cong. 1st Sess.

12. 2 USC §26 appoints the Sergeant at Arms and in his absence the Doorkeeper of the preceding House to assume the Clerk's functions at the opening of Congress, if the Clerk's office should become vacant between Congresses.

13. "The House of Representatives shall chose their Speaker and other Officers. . . ." U.S. Const. art. I, §2, clause 5. For the procedure of the election in general, see §6.1, *infra*.

tion, of privileged character, was formerly made to proceed to the election of the Speaker,⁽¹⁴⁾ in contemporary practice the Clerk simply declares to the House that the election of the Speaker is the next order of business.⁽¹⁵⁾ In early Congresses, the motion was used to determine the method by which the Speaker would be elected;⁽¹⁶⁾ since 1839, however, the Speaker has been chosen by viva voce vote on a roll call with tellers, and Members respond with the name of the nominee of their choice when called on the roll.⁽¹⁷⁾ Although the Clerk appoints tellers for the election,⁽¹⁸⁾ the House and

The priority of the election of the Speaker is dictated by 2 USC §25, requiring the administration of the oath to him, and by him to Members and to the Clerk, before the House enters into other business.

14. 1 Hinds' Precedents §§212-14. The motion is debatable (1 Hinds' Precedents §213), and is of higher privilege than a motion to correct the Clerk's roll. 1 Hinds' Precedents §§19-24.

On one occasion, the Speaker held the motion to adjourn preferential over a resolution declaring the office of Speaker vacant and providing for the election of a Speaker. 8 Cannon's Precedents §2641.

15. See §6.1, *infra*.

16. See 1 Hinds' Precedents §§204-11.

17. 1 Hinds' Precedents §187 (the Speaker was, in early Congresses, elected by ballot).

18. 1 Hinds' Precedents §217. See §6.1, *infra*.