

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*.

not the Clerk determines what method of voting to use.⁽¹⁾ A majority vote of those Members or Members-elect present, if a quorum, suffices to elect a Speaker.⁽²⁾

After announcing that the House will proceed to the election of a Speaker, the Clerk accepts nominations of candidates for the office. There are usually two nominations, one from the chairman of each party caucus or conference.⁽³⁾ The Clerk announces the result of the vote, and declares the chosen Member to be the duly elected Speaker of the House.⁽⁴⁾ A committee, appointed by the Clerk, then escorts the Speaker-elect to the Chair. The

Minority Leader presents the Speaker-elect to the membership,⁽⁵⁾ and he addresses the House and requests a Member-elect, usually the oldest Member in continuous service, to administer the oath to him.⁽⁶⁾ The codified oath administered to the Speaker is the same as that used by him to swear in the Members-elect.⁽⁷⁾

In most Congresses a Speaker has been elected and sworn well before the end of opening day; however, election contests for the office of Speaker have consumed up to nineteen days at the beginning of new Congresses.⁽⁸⁾ On one occasion, the House requested all candidates for the Speaker's office

1. 1 Hinds' Precedents § 210.

2. 1 Hinds' Precedents §§ 215–16. Twice the Speaker has been chosen by a plurality vote, but on both occasions the vote was confirmed by a majority vote. 1 Hinds' Precedents § 221. For one instance where the Speaker was elected by resolution, see § 6.3, *infra*. Members not on the Clerk's roll are not allowed to vote for Speaker (see Ch. 2, *infra*).

3. See § 6.1, *infra*.

4. If the House authorizes the election of the Speaker by a plurality vote instead of a majority vote, the declaration naming the elected Speaker must be made by the House, through a resolution, and not by the Clerk or by a Member. 1 Hinds' Precedents § 222.

5. After the election of the Speaker and before he has been conducted to the chair no debate or business is in order. 1 Hinds' Precedents § 219.

6. "[T]he oath of office shall be administered by any Member to the Speaker" 2 USC § 25.

Although the practice is to have the dean of the House administer the oath to the Speaker (1 Hinds' Precedents §§ 130–33), the custom is not always followed. 6 Cannon's Precedents §§ 6–7.

7. The Constitution requires, in art. VI, clause 3, that all Members (including the Speaker) take the oath, whose form is found at 5 USC § 3331.

8. See 1 Hinds' Precedents §§ 221–23; 5 Hinds' Precedents §§ 5356, 6647, 6649; 6 Cannon's Precedents § 24.

to state their opinions upon important political questions before proceeding to the election.⁽⁹⁾ The most recent protracted contest over the Speaker's election, in 1923, could not be resolved until after the procedure for the adoption of rules had been presented,⁽¹⁰⁾ contrary to the usual practice of postponing consideration or adoption of rules until after the election of the Speaker.⁽¹¹⁾

The election of a new Speaker may occur at the beginning of a second or third session, or during a session, when the Speaker dies in office. The procedure followed by the House in that situation is substantially the same as that used at the beginning of a new Congress;⁽¹²⁾ the Clerk, by tradi-

tion and by rule, presides at such elections since the authority of the Speaker pro tempore, if one has been appointed or elected, terminates with the death of the Speaker.⁽¹³⁾ One difference in election procedure between that at the opening of a Congress and that during the term is that in the latter situation the quorum to elect is established through the calling of the roll alphabetically by name and not by state,⁽¹⁴⁾ although in former times the call was by state in both instances.⁽¹⁵⁾ One further distinction is that a Speaker elected during a Congress must resign from the committees on which he has served while a Member,⁽¹⁶⁾

Although a Member who is chosen Speaker after organization of the House has already taken the oath of office as a Member, it must be administered to him again upon election as Speaker. 1 Hinds' Precedents §225.

9. 1 Hinds' Precedents §218.

10. See 6 Cannon's Precedents §24.

11. Although specific rules as to debate and decorum have been adopted before the election of the Speaker (1 Hinds' Precedents §§94-102), the House has construed the Act of June 1, 1789, Ch. 1, §2, 1 Stat. 23, as amended, 2 USC §25 (1948), to require the election of the Speaker and the administration of the oath to him and to Members-elect to take precedence over other organizational business. 1 Hinds' Precedents §§130, 140.

12. See, in general, 1 Hinds' Precedents §§224-26, 231-34; see also §§6.6-6.7, *infra*.

13. Rule III clause 1, *House Rules and Manual* §637 (1973), specifically provides for the Clerk to preside pending the Speaker's election. See also 1 Hinds' Precedents §§232, 234, and §6.6, *infra*.

14. See §6.8, *infra*. For an occasion where a quorum was not established before the election of the Speaker, see §6.3, *infra* (the Speaker was elected by resolution).

15. See 1 Hinds' Precedents §§232, 234.

16. 1 Hinds' Precedents §230. See §6.5, *infra*. For the Speaker's competence

whereas at the beginning of a new Congress the election of the Speaker takes place well before the making of committee assignments.

Procedure for Election of Speaker

§ 6.1 The election of the Speaker at the beginning of a new Congress, presided over by the Clerk of the previous Congress, proceeds as follows: declaration by the Clerk of the election of the Speaker as the next order of business; recognition by the Clerk of the Chairman of the Democratic Caucus and the Chairman of the Republican Conference for nominations for Speaker; appointment of tellers for the election of the Speaker; calling of the roll; announcement of the result of the vote; declaration by the Clerk naming the new Speaker of the House; appointment by the Clerk of a committee to escort the Speaker-elect to the chair; Minority Leader presents the Speaker-elect to the membership; address of the Speaker-elect to the House from the

to hold committee assignments, see Ch. 6, *infra*.

chair; request by the Speaker-elect of a Member-elect to administer the oath of office to the Speaker; administration of the oath to the Speaker.

On Jan. 10, 1967,⁽¹⁷⁾ after the establishment of a quorum on the opening day of the 90th Congress, the House proceeded as follows, with Ralph R. Roberts, of Indiana, presiding as Clerk:

THE CLERK: The next order of business is the election of a Speaker of the House of Representatives for the 90th Congress.

Nominations are now in order.

MR. ROSTENKOWSKI:⁽¹⁾ Mr. Clerk, as chairman of the Democratic caucus, I am directed by the unanimous vote of that caucus to present for election to the Office of the Speaker . . . the name of the Honorable John W. McCormack [Mass.] . . .

MR. LAIRD:⁽²⁾ Mr. Clerk, as chairman of the House Republican conference and by authority, by direction, and by unanimous vote of the Republican conference, I nominate for Speaker . . . the Honorable Gerald R. Ford [Mich.] . . .

THE CLERK: The Honorable John W. McCormack . . . and the Honorable Gerald R. Ford . . . have been placed in nomination.

. . . There being no further nominations, the Clerk will appoint tellers.

17. 113 CONG. REC. 12-14, 90th Cong. 1st Sess.

1. Mr. Daniel D. Rostenkowski (Ill.).
2. Mr. Melvin R. Laird (Wisc.).

The Clerk appoints. . . .

Tellers will come forward. . . .

The roll will now be called, and those responding to their name will indicate by surname the nominee of their choice.

The following is the result of the vote. . . .

Therefore, the Honorable John W. McCormack, of Massachusetts, is the duly elected Speaker of the House of Representatives for the 90th Congress, having received a majority of the votes cast.

The Clerk appoints the following committee to escort the Speaker-elect to the chair. . . .

The Doorkeeper announced the Speaker-elect of the House of Representatives of the 90th Congress, who was escorted to the chair by the committee of escort. . . .

[The Minority Leader presents the Speaker-elect to the Membership.]

MR. MCCORMACK: My dear friends. . . .

I am now ready to take the oath of office and will ask the dean of the House of Representatives, the Honorable Emanuel Celler, of New York, to administer the oath.

Mr. Celler then administered the oath of office to Mr. McCormack. . . .

§ 6.2 The Minority Leader of the House addressed the House from the Speaker's rostrum and presented the Speaker-elect.

On Jan. 10, 1962,⁽³⁾ Minority Leader Charles Halleck, of Indi-

3. 108 CONG. REC. 6, 87th Cong. 2d Sess.

ana, presented to the House, after the election but before the oath of office, Speaker-elect John W. McCormack, of Massachusetts.

Election of Speaker by Resolution

§ 6.3 On occasion, the Speaker has been elected by resolution.

On June 4, 1936,⁽⁴⁾ following the death, during the session of Congress, of Speaker Joseph W. Byrns, of Tennessee, the House elected a Speaker by the following resolution:

Resolved, That Hon. William B. Bankhead, a Representative from the State of Alabama, be, and he is hereby elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. William B. Bankhead as Speaker of the House of Representatives.

On Sept. 16, 1940,⁽⁵⁾ following the death, during the session, of Speaker Bankhead, the House elected a Speaker by the following resolution:

HOUSE RESOLUTION 602

Resolved, That Hon. Sam Rayburn, a Representative from the State of

4. 80 CONG. REC. 9016, 74th Cong. 2d Sess.

5. 86 CONG. REC. 12231, 76th Cong. 3d Sess.

Texas, be, and he is hereby, elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Sam Rayburn as Speaker of the House of Representatives.

Administration of Oath to Speaker; Resignation From Committees

§ 6.4 The oath of office is administered to the Speaker-elect, at his request, by the dean of the House.

On Jan. 10, 1962,⁽⁶⁾ after Speaker-elect John W. McCormack, of Massachusetts, had been escorted to the chair, he was administered the oath of office, at his request, by the dean of the House, Mr. Carl Vinson, of Georgia.

§ 6.5 If elected after the organization of the House, the Speaker resigns from the committees of the House on which he had served while a Member.

On Jan. 10, 1962,⁽⁷⁾ the first day of the second session, newly-elected Speaker John W. McCormack, of Massachusetts, resigned,

6. 108 CONG. REC. 6, 87th Cong. 2d Sess.

7. 108 CONG. REC. 8, 87th Cong. 2d Sess.

without objection, from the Committees on Government Operations and Science and Astronautics, and from the Franklin Delano Roosevelt Memorial Commission.

Election of Speaker During a Session or at Opening of Second Session

§ 6.6 Following the death of the Speaker, between sessions of a Congress, the authority of an elected Speaker pro tempore terminates, and the Clerk presides at the reconvening until the election of a new Speaker.

On Jan. 10, 1962,⁽⁸⁾ the Clerk of the House, Ralph R. Roberts, of Indiana, called the second session of the 87th Congress to order for the purpose of electing a new Speaker. The Honorable John W. McCormack, of Massachusetts, elected Speaker pro tempore in the first session during the last absence of Speaker Rayburn, was elected Speaker of the second session.

§ 6.7 When a Speaker dies during a session of Congress the Clerk calls the House to order, makes announcement

8. 108 CONG. REC. 5, 87th Cong. 2d Sess.

thereof, and presides over the election of a new Speaker.

On June 4, 1936,⁽⁹⁾ the Clerk of the House, South Trimble, called the House to order during the second session and announced the sudden death, during the early morning hours, of the Speaker, the Honorable Joseph W. Byrns, of Tennessee. The Clerk then presided over the election of a new Speaker.⁽¹⁰⁾

§ 6.8 When a vacancy arises in the Speaker's office during the term of a Congress, the quorum to elect a new Speaker is established by an alphabetical roll call.

On Jan. 10, 1962,⁽¹¹⁾ following the death, in office, of Speaker Sam Rayburn, of Texas, a quorum to elect a Speaker was established by Clerk Ralph R. Roberts, of Indiana, who directed the call of the

9. 80 CONG. REC. 9016, 74th Cong. 2d Sess.
10. Before the House proceeded to the election, the roll was not called to establish a quorum, as the House chose to elect the Speaker by resolution. See §6.3, supra. See also 86 CONG. REC. 12231, 76th Cong. 3d Sess., where the Clerk presided following the death of Speaker Bankhead during the session.
11. 108 CONG. REC. 5, 87th Cong. 2d Sess.

roll alphabetically by Members' names.

§ 7. Business Under Speaker as Presiding Officer

After the Speaker has been elected and sworn at the beginning of a new Congress, he presides over the completion of all organizational business.⁽¹²⁾ The three most important stages that remain after the election of the Speaker, and which are required by the Constitution, are the administration of the oath to Members-elect,⁽¹³⁾ the election of officers,⁽¹⁴⁾ and the adoption of the rules of the House.⁽¹⁵⁾ Another essential step which the Speaker takes, although not required by the Constitution, is the administration of the oath of office to the Clerk and to the other officers of the House.⁽¹⁶⁾ There are various

12. See §7.1, infra.
13. U.S. Const. art. VI, clause 3. For detailed analysis, see Ch. 2, infra.
14. U.S. Const. art. I, §2, clause 5. See Ch. 6, infra.
15. U.S. Const. art. I, §5, clause 2. See §10, infra.
16. 2 USC §25 requires the administration to the Clerk of the oath to support the Constitution of the United States. Rule II, *House Rules and Manual* §635 (1973) provides for