

## **Chapter 34**

### **Office of the 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
- Manual* §§ 621–639, 970

#### **§ 1. Role of Speaker**

The Speaker is the presiding officer of the House and is charged with numerous duties and responsibilities by law and by the House rules. 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 his 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, he 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 on his taking of his oath of office, which immediately follows his election and opening remarks. The term ends on the expiration of the Congress in which he was elected, unless he has resigned, died, or been removed from office. Deschler Ch 6 § 2. During the 104th through 107th Congresses, the Speaker's term of office was limited for four consecutive Congresses. That rule was repealed in the 108th Congress. *Manual* § 635.

### Vacancy

The Office of Speaker may be declared vacant by resolution, which may be offered as a matter of privilege. *Manual* § 315; 6 Cannon § 35. Under rule I clause 8(b)(3), 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. The Member acting as Speaker pro tempore under this provision may exercise such authorities of the Office of Speaker as may be necessary and appropriate pending the election of a Speaker or Speaker pro tempore. A vacancy in the Office may exist by reason of the physical inability of the Speaker to discharge the duties of the Office.

## § 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 his selection from among that class, but the practice has been followed invariably. The Speaker's term of office thus expires at the end of his term of office as a Member, whereas the other House officers continue in office "until their successors are chosen and qualified." Rule II clause 1; 1 Hinds § 187.

### Nomination and Vote

The general practice for election of Speaker begins with nominations from each party caucus followed by a *viva voce* vote of the Members-elect. 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.

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. The Clerk appoints tellers for this 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 § 3883.

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 ratified the plurality election by a majority vote.

#### **§ 4. Jurisdiction and Duties; Rulings**

The Speaker presides over the business of the House. In the execution of his duties, the Speaker:

- Calls to order and the 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 a Speaker pro tempore, and appoints Chairmen 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.

## § 4

### HOUSE PRACTICE

- Declares the House in recess in the event of an emergency pursuant to his inherent power, pursuant to rule I clause 12, or pursuant to a House resolution authorizing him to take such action. Deschler Ch 6 § 3.44; see RECESS.
- Changes 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. Rule I clause 12(c).
- Convenes the House in a place at the seat of government other than the Hall of the House whenever it is in the public interest. Rule 1 clause 12(d).
- Signs various documents, including warrants and subpoenas. Rule I clause 4.
- 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, 6410, 6414, 6416, 6409–6413; 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. Rule IV clause 2(a)

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.
- Determine questions that are within the province of the Chairman 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 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 he holds is incompatible with his membership, these being matters for the House to decide. 2 Hinds § 1275; 6 Cannon § 253.
- Look behind the unambiguous language of a special order adopted by the House when interpreting its language. *Manual* § 628.

For jurisdiction and duties of the Chairman 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 he has made a statement from the Chair or in which he has relinquished the Chair and participated in the debate on the floor. *Manual* § 358. He 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, he calls another Member 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 he is required to vote where his vote would be decisive or where the House is engaged in voting by ballot. Rule I clause 7; *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 his vote would be decisive. 5 Hinds §§ 6061–6063. On an electronic vote, the Chair may direct the Clerk to record him and verify that instruction by submitting a vote card. *Manual* § 631.

## § 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. Rule I clause 8. For longer periods, a Speaker pro tempore is elected by the House. *Manual* § 632. A Member sometimes is designated 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. Rule I clause 8. The Speaker may appoint two alternate Members to sign enrolled bills. *Manual* § 634. Under rule I clause 8(b)(3), 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.

A Speaker pro tempore is elected pursuant to resolution. Deschler Ch 6 § 14.1. The resolution may be offered by the chairman of the majority party caucus or by the Majority Leader. Deschler Ch 6 § 14. A Speaker pro tempore by designation leaves the Chair pending the offering of a resolution electing him as Speaker pro tempore. Deschler Ch 6 §§ 11.7, 14.1.

### Oath of Office

The oath of office is administered to an elected Speaker pro tempore, but not to a designated Speaker pro tempore. Deschler Ch 6 § 11. The oath is administered to an elected Speaker pro tempore by the Speaker himself, by the Dean of the House, or by another Member. Deschler Ch 6 §§ 11.4–11.6.

### Who May Serve

Under rule I clause 8, the Speaker pro tempore must be a Member of the House. *Manual* § 632. He usually is a member of the majority party (Deschler Ch 6 § 10), such as the Majority Leader (Deschler Ch 3 § 17.5) or the Majority Whip (Deschler Ch 3 § 23.5). 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

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 are 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. When the Office of Speaker is vacant, the Member acting as Speaker pro tempore under rule I section 8(b) may exercise such authorities of the Office as may be necessary and appropriate pending the election of a Speaker or Speaker pro tempore.

The authority of a Speaker pro tempore to exercise certain powers depends on whether he is designated, designated and approved, 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.
- Announce appointments made by the Speaker pursuant to law. 96–1, Jan. 31, 1979, p 1511.
- 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.
- Spread upon the Journal a veto message from the President. Deschler Ch 6 § 12.11.

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.