

§ 2. Presentation of Credentials and the Clerk's Roll

The procedures for enrolling Members on opening day of a new Congress derive from constitutional and statutory provisions, as well as general parliamentary law and the customs and traditions of the House.⁽¹⁾ The first step in this process is the presentation of appropriate credentials from state election officials. These credentials take the form of a specific document known as the certificate of election, which is certified by a state executive official and attests that the individual named was duly elected to the House.⁽²⁾ Certificates of election are transmitted to the Clerk of the House and may arrive any time between the election and the opening of the new Congress. The Clerk gathers together such certificates and uses them to compose a roll of Members–elect.⁽³⁾

The Clerk generally will not include a Member–elect on the Clerk's roll if such individual is not supported by a certificate of election.⁽⁴⁾ The Clerk may review state law to determine if the certificate is in proper form and validly issued.⁽⁵⁾ On occasion, certificates of election have not been transmitted to the Clerk in time for the Members–elect to be included on the Clerk's roll on opening day. In such circumstances, the House has, by unanimous consent, permitted the individuals to be included in the roll (where there was no controversy as to the election, the delay in transmitting credentials being a purely administrative matter).⁽⁶⁾ If a notice of an election contest has been filed, but the Member–elect appears with proper credentials, such Member–elect will be included on the Clerk's roll, without prejudice to the final determination as to which individual is entitled to that seat.⁽⁷⁾

When a Member–elect dies before the new Congress convenes, such Member–elect's name remains on the Clerk's roll, and is only removed therefrom

1. For organizational steps at the beginning of a Congress, see generally Deschler's Precedents Ch. 1 and Precedents (Wickham) Ch. 1.
2. For more on certificates of election generally, see Deschler's Precedents Ch. 8 §§ 15–17.
3. 2 U.S.C. § 26. In the absence or incapacity of the Clerk, the duty of composing the roll of Members–elect devolves to the Sergeant–at–Arms. For an example of the Doorkeeper (a position abolished in the 104th Congress) assuming these functions in the absence of both the Clerk and the Sergeant–at–Arms, see Deschler's Precedents Ch. 2 § 4.2.
4. *Parliamentarian's Note*: For the last known instance of the Clerk including a Member–elect on the Clerk's roll without having received a certificate of election (but having received a communication from the Governor regarding an issue of state election law), see Deschler's Precedents Ch. 2 § 4.4.
5. See, e.g., Deschler's Precedents Ch. 2 § 4.3.
6. See §§ 2.1, 2.2, *infra*.
7. For parliamentary inquiries on this issue, see § 2.3, *infra*.

after the initial quorum call and a subsequent announcement by the Clerk that a vacancy exists for that congressional seat.⁽⁸⁾ Similarly, a Member-elect who declines to take a seat (*i.e.*, resigns as a Member-elect for the upcoming Congress) remains on the Clerk's roll until formal notification of such resignation can be laid before the House and the vacancy announced.⁽⁹⁾

The Clerk's roll lists Members-elect alphabetically by state, and is called only once, at the beginning of a new Congress, to establish a quorum.⁽¹⁰⁾ Once this initial quorum is established, the House may then proceed to the organization of the House. The Clerk's roll serves as the formal list of those individuals authorized to participate in those additional steps of organization, which include the election of the Speaker and proceedings prior thereto.⁽¹¹⁾

Composing the Clerk's Roll

§ 2.1 At the beginning of a Congress, Members-elect from a state have been permitted, by unanimous consent, to record their presence during the first quorum call and to vote for the Speaker, where certificates of election had not been received by the Clerk (due to state administrative delay in certifications of all elections in that state) and there was no contest with respect to such elections.⁽¹²⁾

For the January 4, 1995,⁽¹³⁾ proceedings, see Precedents (Wickham) Ch. 1 § 3.6.

8. See § 2.4, *infra*. See also Deschler's Precedents Ch. 2 § 4.7. For contrary instances where the Clerk removed a Member-elect's name from the roll upon notification of the death of said Member-elect, see Deschler's Precedents Ch. 2 §§ 4.6, 4.8, and 4.9.

9. See § 2.5, *infra*.

10. See Deschler's Precedents Ch. 1 § 5.1 and Deschler's Precedents Ch. 2 § 4.1.

11. See Deschler's Precedents Ch. 1 § 6.1.

12. *Parliamentarian's Note*: The Secretary of State for the state of Alabama withheld the certificates of election for the entire delegation until a contested state-level election was resolved. In lieu of the certificates, the Secretary of State sent a letter unofficially informing the House that the members of the delegation had received a majority of votes. The official certificates of election were not received until a month later. Unanimous consent was required to permit the delegation to participate in the quorum call and to vote for the Speaker because a Member-elect has the right to be included on the Clerk's roll only if a certificate of election, in due form, is on file with the Clerk; and only those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker or to participate in organizational proceedings prior to the administration of the oath. A claimant not on the roll, however, may take the oath and be admitted to membership. See Deschler's Precedents Ch. 2 § 2.

13. 141 CONG. REC. 439, 446, 104th Cong. 1st Sess.

§ 2.2 Where the official certificate of election for a Member-elect is not received by the Clerk prior to the opening of a new Congress, thus preventing such Member-elect from being included on the Clerk's roll, unanimous consent is required to allow such Member-elect to register his or her presence during the initial quorum call and to vote for Speaker.⁽¹⁴⁾

On January 7, 2003,⁽¹⁵⁾ the following occurred:

The CLERK.⁽¹⁶⁾ Representatives-elect, this is the day fixed by the 20th amendment to the Constitution and Public Law 107-328 for the meeting of the 108th Congress and, as the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect.

Certificates of election covering 434 seats in the 108th Congress have been received by the Clerk of the House, and the names of those persons whose credentials show that they were regularly elected as Representatives in accordance with the laws of their respective States or of the United States will be called.

The Clerk lays before the House a facsimile of a communication from the Chief Election Officer of the State of Hawaii.

JANUARY 5, 2003.

Hon. JEFF TRANDAHL,
Clerk, House of Representatives,
Washington, DC.

DEAR MR. TRANDAHL: This is to advise you that the unofficial results of the Special Election held on Saturday, January 4, 2003 for Representative in Congress from the Second Congressional District of Hawaii show that Ed Case (D) received 33,002 of votes of the total number cast for that office.

It would appear from the unofficial results that Ed Case (D) was elected Representative from the Second Congressional District of Hawaii. We are unaware of any election contest at this time.

As soon as the official results are certified, an official Certificate of Election will be transmitted as required by law. . . .

Very truly yours,

DWAYNE D. YOSHINA,
Chief Election Officer. . . .

The CLERK. Without objection, the Representative-elect from the Second District of the State of Hawaii will be allowed to record his presence and also to vote on the election of the Speaker.

There was no objection.

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14. *Parliamentarian's Note:* Rep. Patsy Mink of Hawaii died on September 28, 2002, but was reelected posthumously to the 108th Congress. Ed Case won the special election on January 4, 2003, to fill the vacancy caused by her death, but the certificate of election had not been received by the Clerk in time to be included on the Clerk's roll.
15. 149 CONG. REC. 1, 108th Cong. 1st Sess. See also Precedents (Wickham) Ch. 1 § 4.3.
16. Jeff Trandahl.

The CLERK. Without objection, the Representatives–elect will record their presence by electronic device and their names will be reported in alphabetical order by States, beginning with the State of Alabama, to determine whether a quorum is present.

§ 2.3 In response to parliamentary inquiries, the Speaker informed the House that she had been advised by the Clerk: (1) that notice of an election contest had been filed with respect to an election; (2) that among the credentials of Members–elect were documents reflecting that a Member–elect had been certified by the state official as duly elected; and (3) that the seating of a Member–elect is without prejudice to a contest over final right to the seat.

On January 4, 2007,⁽¹⁷⁾ the Speaker entertained parliamentary inquiries as follows:

SWEARING IN OF MEMBERS

The SPEAKER.⁽¹⁸⁾ According to precedent, the Chair will swear in the Members–elect en masse.

PARLIAMENTARY INQUIRY

Mr. [Rush] HOLT [of New Jersey]. I have a parliamentary inquiry, Madam Speaker.
The SPEAKER. The gentleman may state his inquiry.

Mr. HOLT. In light of the fact that there are nonpartisan and partisan lawsuits under way with regard to Florida’s 13th Congressional District and that the votes of 18,000 voters were not recorded on the paperless electronic voting machines in an election decided by only 369 votes, may I ask for the record whether a notice of contest has been filed with the Clerk on behalf of CHRISTINE JENNINGS pursuant to law and what effect, if any, today’s proceedings have on the pending contests?

The SPEAKER. The Chair is advised by the Clerk that a notice of contest pursuant to statute, section 382 of title 2, United States Code, has been filed with the Clerk. Under section 5 of article I of the Constitution and the statute, the House remains the judge of the elections of its Members. The seating of this Member–elect is entirely without prejudice to the contest over the final right to that seat that is pending under the statute and will be reviewed in the ordinary course in the Committee on House Administration.

Mr. HOLT. I thank the Speaker.

PARLIAMENTARY INQUIRY

Mr. [Adam] PUTNAM [of Florida]. Parliamentary inquiry, Madam Speaker.
The SPEAKER. The gentleman may state his inquiry.

Mr. PUTNAM. Am I correct, Madam Speaker, that the gentleman from Florida (Mr. BUCHANAN) has been certified by the Secretary of State as duly elected from the 13th District of Florida?

17. 153 CONG. REC. 5, 110th Cong. 1st Sess.

18. Nancy Pelosi (CA).

The SPEAKER. The gentleman is correct.

Mr. PUTNAM. I thank the Speaker.

The SPEAKER. If the Members–elect will rise, the Chair will now administer the oath of office.

The Members–elect and Delegates–elect and the Resident Commissioner–elect rose, and the Speaker administered the oath of office to them as follows:

Do you solemnly swear or affirm that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations. You are now Members of the 110th Congress.

Death or Resignation of Member–elect

§ 2.4 When a Member–elect dies prior to opening day of a new Congress, such Member–elect’s name is included in the Clerk’s roll (because the certificate of election remains on file with the Clerk), and the Clerk on opening day announces to the House the existence of a vacancy caused by the death of such Member–elect.

On January 3, 2001,⁽¹⁹⁾ the following announcement was made by the Clerk following the initial quorum call of Members–elect for the 107th Congress:

ANNOUNCEMENT BY THE CLERK

The CLERK.⁽²⁰⁾ The Clerk will state that since the last regular election of Representatives to the 107th Congress, a vacancy now exists in the 32d District of the State of California, occasioned by the death of the late Honorable Julian C. Dixon.

§ 2.5 When a Member–elect resigns prior to the beginning of the Congress to which such individual was elected,⁽²¹⁾ the name of such Member–elect remains on the Clerk’s roll, and the Clerk lays

19. 147 CONG. REC. 20, 107th Cong. 1st Sess. See also Deschler’s Precedents Ch. 38 § 2.12 and Precedents (Wickham) Ch. 1 § 3.7.

20. Jeff Trandahl.

21. *Parliamentarian’s Note*: Rep. Rahm Emanuel of Illinois, a Member of the 110th Congress and a Member–elect for the 111th Congress, wrote a letter to the Governor of Illinois stating that he resigned “effective January 2, 2009.” Taken literally, such statement could be construed as a resignation only for the final day of the 110th Congress and not as a Member–elect for the 111th Congress. Rep. Emanuel’s letter to the Speaker clarified that he intended not to take his seat in the 111th Congress.

before the House the letter of resignation following the initial quorum call.

On January 6, 2009,⁽²²⁾ the following communications were laid before the House following the initial quorum call of Members–elect for the 111th Congress:

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The CLERK.⁽²³⁾ The Clerk is in receipt of a letter of resignation from the Honorable Rahm Emanuel from the State of Illinois.

Without objection, the letters relating to his resignation will be printed in the RECORD. There was no objection.

DECEMBER 30, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR SPEAKER PELOSI: I am writing to inform you that I have notified the Governor of Illinois of my resignation from the U.S. House of Representatives effective January 2, 2009, at the end of the 110th Congress. I do not intend to take the office of Representative for the Fifth Congressional District in the 111th Congress. A copy of that letter is attached.

It has been a privilege to serve the constituents of Illinois' 5th District for the last six years and to work with you and our colleagues in Congress.

Sincerely,

RAHM EMANUEL,
Member of Congress.

JANUARY 2, 2009.

Hon. ROD BLAGOJEVICH,
Governor, State of Illinois,
Statehouse, Springfield, IL.

DEAR GOVERNOR BLAGOJEVICH: I am writing to resign my position as United States Representative from the Fifth Congressional District of Illinois, effective January 2, 2009.

It has been a tremendous privilege to serve the people of the Fifth District over the past six years. I am grateful for the opportunity to represent the hopes and dreams of a quintessentially American district, from hardworking families to new immigrants to the senior citizens who built this great country. It has been my particular privilege to represent the district's many military troops and veterans, who put their lives on the line to protect the values we cherish. Their sense of duty and sacrifice has been an inspiration, which I will carry with me to my new duties as chief of staff to President–elect Barack Obama.

As sons of immigrants to this country, you and I have a deep appreciation for the opportunities America provides to those who are willing to work hard and sacrifice for their

22. 155 CONG. REC. 2, 111th Cong. 1st Sess. See also 151 CONG. REC. 36–39, 41, 109th Cong. 1st Sess. (Jan. 4, 2005).

23. Lorraine Miller.

children. As a member of the next Administration in Washington, I will strive to maintain and expand that opportunity for all families, because the chance to work hard and build a better life is the principle that unites all Americans. Over the past few years, our government in Washington has lost sight of that principle by catering to the wealthiest Americans and powerful special interests—leaving middle-class Americans to struggle with rising health care costs, reduced pensions and a collapsing economy. The recent election was a clarion call for a change in direction, so we can recapture the values that have made our nation a beacon of hope and opportunity.

As I go to work everyday in the incoming Obama Administration, I will keep in mind the stories of the working families and senior citizens who I met during the past six years in grocery stores, schools and churches across the Fifth District. I will strive to make our government work for them and their children, because that is the true measure of our success as a nation.

With gratitude and best wishes,

Sincerely,

RAHM EMANUEL,
Member of Congress.

§ 3. Administering the Oath

As noted in the preceding section, the Clerk's roll is called immediately after the convening of a new Congress, with the Clerk from the previous Congress presiding over the initial quorum call.⁽¹⁾ Those Members-elect on the Clerk's roll are entitled to participate in proceedings prior to the election of Speaker and are eligible to vote in such election.⁽²⁾ Members-elect may pose parliamentary inquiries to the Clerk prior to the election of Speaker,⁽³⁾ and may also appeal rulings made by the Clerk.⁽⁴⁾ Members-elect may propound (and agree to) unanimous-consent requests, such as to permit Members-elect lacking certificates of election to be included in the Clerk's roll.⁽⁵⁾ Members-elect may vote for Speaker even if they fail to record their presence during the initial quorum call.⁽⁶⁾

After the election of Speaker, the Dean of the House (traditionally the Member with the longest continuous service in the House) administers the

1. *Parliamentarian's Note*: When the House convenes for a second (or any subsequent) session, the membership of the body has already been established. Thus, the initial quorum call to begin a second session of a Congress is a regular quorum call of full Members (not Members-elect). See § 3.4, *infra*.
2. *Parliamentarian's Note*: Delegates-elect and the Resident Commissioner-elect, however, are not permitted to vote for Speaker. See *Precedents (Wickham)* Ch. 1 § 3.5.
3. See 143 CONG. REC. 114–20, 105th Cong. 1st Sess. (Jan. 7, 1997).
4. See § 3.4, *infra*.
5. See § 2.1, *supra*.
6. See 143 CONG. REC. 114–120, 105th Cong. 1st Sess. (Jan. 7, 1997).