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Chapter 5
Assembly of Congress

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Research References
1 Hinds §§ 1–10; 5 Hinds §§ 6758–6762
6 Cannon §§ 1–5
Deschler Ch 1
Manual §§ 60, 245

§ 1. In General; Day of Convening

Generally

The Constitution provides that each regular session of Congress shall begin on January 3 unless Congress by law appoints a different day. U.S. Const. amend. XX, § 2. A joint resolution, which is not considered privileged, is used for such appointment. For laws appointing a different day for assembling, see *Manual* § 243. The joint resolution may originate either in the House or in the Senate. 93–1, Dec. 17, 1973, p 42059; 95–1, Dec. 15, 1977, p 38948.

The President has the constitutional authority to convene the Congress earlier than on the day it has fixed for its reconvening. He may exercise this authority on ''extraordinary occasions'' by convening either or both Houses. U.S. Const. art. II, § 3. A number of early Congresses were convened by Presidential proclamation. 1 Hinds §§ 10, 12. The last session so convened was in the 76th Congress. Deschler Ch 1 § 2.1.

A privileged concurrent resolution providing for the adjournment of a Congress *sine die* may contain a provision providing for a recall of either House or of both Houses by their respective leaderships. Pursuant to the authority of such a resolution, Speaker Gingrich recalled the House on December 17, 1998, on notice of one week. *Manual* § 84.

For a catalog of provisions in concurrent resolutions authorizing the recall of the House or both Houses, see *Manual* § 84 and ADJOURNMENT.

Pro Forma Meetings

Upon completion of the legislative business for a session, the House may schedule pro forma meetings for the remainder of the constitutional term. 96–1, Dec. 14, 1979, p 36200. For example, as the first session of the 96th Congress drew to a close, the House, by unanimous consent, agreed to convene every third day for the remainder of the session, including a final pro forma meeting immediately before the constitutional expiration of the session at noon on January 3, 1980. 96–1, Dec. 20, 1979, p 37317. Similarly, in the 102d Congress, pursuant to the concurrent resolution that placed the two Houses in an intrasession adjournment from November 27, 1991, until January 3, 1992, the House convened at 11:55 a.m. on that day for its final meeting of the first session. Alternatively, the House may recess pursuant to a rule reported from the Committee on Rules at the end of a session for periods not in excess of three days. *Manual* § 83.

On January 3 of an even-numbered year, in the absence of a law appointing a different convening date, the Speaker may either (1) announce the adoption of a simple motion to adjourn the last day of the first session just before noon to declare the House adjourned *sine die* so that the second session may convene at noon (102–2, Jan. 3, 1992, p 36367) or (2) unilaterally declare the House adjourned *sine die* just before noon (without a simple motion) so that the second session may convene at noon (105–2, Jan. 3, 1996, p 35).

§ 2. Hour of Meeting

Generally; Hourly Schedules

Each House has plenary power over the time of its meetings during the session. If the time of meeting has not been set previously by resolution, the House, by long-standing practice having the force of a standing order, meets each day at noon. Deschler Ch 1 § 3. However, it is the customary practice of the House to adopt a resolution establishing times for its daily meetings. *Manual* § 621.

Convening times are selected to provide sufficient committee time for hearings and markups early in the session, and sufficient floor time later for authorization and appropriation bills. Resolutions setting daily meeting times are considered privileged, even though they are not reported from the Committee on Rules, because they are incidental to the organization of the House. 97–2, Jan. 25, 1982, p 62. However, subsequent resolutions changing

the hour of meeting, unless reported as privileged from the Committee on Rules, require unanimous consent for consideration (although ad hoc arrangements from day to day may be effected by privileged motion under rule XVI clause 4). 95–2, June 29, 1978, p 19507.

Adjournments to a Different Hour

The meeting hour may be subsequently changed on certain days of the week pursuant to the adoption of a resolution setting forth the new convening time. 95–1, June 30, 1977, p 21685. The House may by unanimous consent vacate a previous order providing for the House to meet at a certain time and agree to meet at a different time. Deschler Ch 1 §§ 3.12, 3.13. The motion that when the House adjourns it adjourn to a day and time certain also may be used to enable the House to meet at an hour different from that provided by the standing order. For a general discussion of this motion (which is a privileged motion at the Speaker's discretion), see ADJOURNMENT.

Emergency Convening Authority

During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening, then he may, in consultation with the Minority Leader, postpone the time for reconvening within the three-day limit prescribed by the Constitution. In the alternative, the Speaker in such case may reconvene the House before the time previously appointed solely to declare the House in recess within that three-day limit. Rule I clause 12(c).

§ 3. Place of Meeting

Under article I, section 5, clause 4 of the Constitution, neither House may, without consent of the other, adjourn ''to any other Place than that in which the two Houses shall be sitting.'' The requirement for consent has been interpreted to apply to the seat of government, which has been, since 1800, the District of Columbia. Therefore, the House may convene sit in another place within the District of Columbia without the consent of the Senate. Deschler Ch 1 § 4.1. Under rule I clause 12(d), the Speaker may convene the House in a place at the seat of government other than the Hall of the House whenever, in his opinion, the public interest shall warrant it.

In the 107th Congress, the two Houses authorized joint leadership recall from an adjournment ''at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it'' (permitting recall from an adjournment to a place outside the District of Columbia). 107–1, H. Con. Res. 251, Oct. 17, 2001, p ____; 107–1, S. Con. Res. 85, Nov.

16, 2001, p ____. In the 108th Congress, the two Houses granted blanket joint leadership authority to assemble the 108th Congress at a place outside the District of Columbia whenever the public interest shall warrant it. 108–1, H. Con. Res. 1, Jan. 7, 2003, p ____.

The President may convene Congress at places outside the seat of government during hazardous circumstances. 2 USC § 27; Deschler Ch 1 § 4.

§ 4. Organizational Business—First Session

Functions of the Clerk

Under rule II clause 2(a), the Clerk from the prior Congress (including one appointed pursuant to section 75a01 of title 2, United States Code), creates a roll of the Representatives-elect and calls the House to order at the beginning of a new Congress. 2 USC § 26; *Manual* § 643. In the event of the Clerk's absence or incapacity, the Sergeant-at-Arms from the prior Congress creates the roll and calls the House to order. 2 USC § 26; *Manual* § 656. After the opening prayer and Pledge of Allegiance, the Clerk:

- Announces the receipt of credentials of Members-elect.
- Causes a quorum to be established, by roll call by State, by electronic device.
- Announces the filing of credentials of Delegates-elect and of the Resident Commissioner.
- Recognizes for nominations for Speaker.
- Appoints tellers for the roll call vote (alphabetical by surname) for Speaker.
- Announces the vote.
- Appoints a committee to escort the Speaker to the Chair.

Election of Speaker

The first order of business after the ascertainment of a quorum at the opening of a new Congress is ordinarily the election of the Speaker. *Manual* § 27. Pursuant to statute and precedent, nominations for election of the Speaker are of the highest privilege and take precedence over a question of the privileges of the House relating to the interim election of a Speaker pro tempore pending an ethics investigation of a nominee for Speaker. 2 USC § 25; *Manual* § 27; 1 Hinds § 212.

Candidates for the office are nominated by the chairmen of the Democratic Caucus and the Republican Conference. Deschler Ch 1 § 6.1. The Speaker is elected by a majority of Members-elect present and voting by surname. *Manual* § 27. He was at first elected by ballot but, since 1839, has been chosen by *viva voce* vote by surname in response to a call of the roll. 1 Hinds § 187; Deschler Ch 1 § 6. Although the Clerk appoints tellers for

the election, the House, and not the Clerk, determines what method of voting to use. *Manual* § 27; Deschler Ch 1 § 6. On two occasions, by special rules, Speakers were chosen by a plurality of votes; but in each case the House by majority vote adopted a resolution declaring the result. 1 Hinds §§ 221, 222. The House has declined to choose a Speaker by lot. 1 Hinds § 221.

Status and Rights of Members-elect

Where the certificate of election of a Member-elect, in due form, is on file with the Clerk, he is entitled as of right to be included on the Clerk's roll. *Page v. United States*, 127 U.S. 67 (1888). Those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker at the beginning of a Congress and to participate in other organizational business before the administration of the oath. They may debate propositions, propose motions, offer resolutions, and make points of order. Deschler Ch 2 § 2. When sworn in, Members may be named to serve on House committees and may introduce bills. *Manual* § 300; 4 Hinds §§ 4477, 4483, 4484.

All Members-elect whose credentials have been received by the Clerk are included on the first roll call on opening day to establish a quorum. Members-elect not responding to that call and not appearing to take the oath when it is administered *en masse* on opening day are not included on further roll calls until they have taken the oath. Generally, see OATHS. Pursuant to article I, section 2 of the Constitution, because the House is composed of Members elected by the people of the several States and because the House elects its Speaker, the Delegates-elect and the Resident Commissioner from Puerto Rico are not constitutionally qualified to vote in the House for Speaker. Therefore, the Clerk does not include them on the roll. *Manual* § 675.

Notices and Messages

At the beginning of a new Congress, the House by various resolutions: (1) directs that a message be sent to the Senate to inform that body that a quorum of the House has been established and that the Speaker and Clerk have been elected, (2) establishes a select committee to notify the President that a quorum of the House has assembled and is ready to receive any communication he may wish to make, and (3) directs the Clerk to inform the President of the selection of the Speaker. Deschler Ch 1 § 7.

§ 5. Organizational Business—Second Session

At the beginning of a second session of a Congress, the House is ordinarily called to order by the Speaker, although, where the Office is vacant,

the House may be called to order by the Clerk. Deschler Ch 1 § 5. Alternatively, the House may be called to order by a previously designated Speaker pro tempore. Deschler Ch 1 § 7.4. 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 designated under this rule also may convene the second session of a Congress. Following the opening prayer, the Speaker orders, without motion, a call of the House to establish a quorum. Deschler Ch 1 § 7.5. The call of the House may be taken by electronic device, but the Speaker may elect not to use the electronic system for that purpose. Deschler Ch 20 § 4.

Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes. Their names are included on the roll only after their certificates of election have been laid before the House and the oath has been administered to them. Similarly, the names of those Members who resigned during adjournment are stricken from the roll and are not called to establish a quorum. Deschler Ch 2 § 4.10.

§ 6. Adoption of Rules and Separate Orders

The Constitution gives each House the power to determine the rules of its proceedings. U.S. Const. art. I, § 5, cl. 2. The Supreme Court has interpreted this clause to mean that the House possesses broad power to adopt its own procedural rules. *United States* v. *Ballin*, 144 U.S. 5 (1892). This power cannot be restricted by the rules or statutory enactments of a preceding House. Thus, the adoption of the three-day availability rule by the 91st Congress did not bind the 92d Congress. Deschler Ch 1 § 10.1.

The rules of the House for each Congress are adopted by resolution. See, *e.g.*, 105–1, Jan. 7, 1997, p ____. Ordinarily, the House adopts the rules of the prior Congress but with various amendments. 5 Hinds § 6742. Separate orders also may be adopted in the same resolution. Separate orders are not amendments to the standing rules but have the same force and effect for a Congress or portion thereof. See, *e.g.*, 108–1, H. Res. 5, Jan. 7, 2003, p ____. The House in the 106th Congress adopted a recodified version of the rules of the House in existence at the close of the 105th Congress, which rewrote and renumbered the rules, many without substantive change. 106–1, Jan. 6, 1999, p ____.

A resolution adopting rules is subject to the motion for the previous question. The resolution is subject to amendment if the previous question is voted down. Deschler Ch 1 § 9.6. The resolution is not subject to a de-

mand for a division of the question absent prior adoption of a special rule permitting a division of the resolution. *Manual* § 60; Deschler Ch 1 § 10.8.

The motion to commit is permitted after the previous question has been ordered on the resolution adopting the rules but is not debatable. It is the prerogative of the minority to offer a motion to commit even before the adoption of the rules. However, at that point the proponent need not qualify as opposed to the resolution. *Manual* § 60; Deschler Ch 1 § 9. Such a motion to commit is not divisible. However, if it is agreed to and more than one amendment is reported back pursuant thereto, then separate votes may be had on the reported amendments. The motion to refer also has been permitted upon the offering of a resolution adopting the rules, and before debate thereon, subject to the motion to lay on the table. *Manual* § 60; 5 Hinds § 5604.

As with other House-passed measures, the House may by unanimous consent direct the Clerk, in the engrossment of a House resolution providing for the adoption of rules, to make certain technical corrections in the text of the resolution. Deschler Ch 1 § 10.12.

§ 7. Procedure Before Adopting Rules

Before the adoption of formal rules, the House operates under general parliamentary law, as modified by certain customary House rules and practices and by portions of Jefferson's Manual. *Manual* § 60; 5 Hinds §§ 6761–6763; 8 Cannon § 3386. Statutes incorporated into the rules of the prior Congress do not control the proceedings of the new House. Deschler Ch 1 § 10.1. They must be re-adopted as part of the rules of the new House in the resolution adopting those rules.

Before the adoption of rules by the House, rules that embody practices of long-established custom will be enforced as if already in effect. 6 Cannon § 191. Thus, before adoption of the rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well or by directing the Sergeant-at-Arms to present the mace as the traditional symbol of order. *Manual* § 60.

Procedures common to general parliamentary law applicable in the House before the adoption of its formal rules include:

- The motion for a call of the House. 4 Hinds § 2981; Deschler Ch 1 § 9.
- Points of order of no quorum. *Manual* § 60.
- The motion to refer, subject to the motion to table. *Manual* § 60.
- Demands for the yeas and nays. 5 Hinds §§ 6012, 6013; Deschler Ch 1 § 9.
- The motion for the previous question, which takes precedence over a motion to amend. 5 Hinds §§ 5451–5455.

- The motion to amend after rejection of the previous question (Deschler Ch 3 § 10.10), with any amendment being subject to the point of order that it must be germane (Deschler Ch 1 § 12.7).
- The practice that Members may engage in debate only when recognized, such recognition being at the discretion of the Speaker. *Manual* § 60.
- The hour rule for debate on a question. Deschler Ch 1 § 12.3.
- Losing the right to resume after yielding the floor. 5 Hinds §§ 5038–5040.
- Recognition for an amendment after the defeat of the previous question, under the hour rule, with the proponent of the amendment controlling the time. Deschler Ch 23 § 22.4.
- The nondebatable motion to commit after ordering of the previous question. *Manual* § 60; 5 Hinds § 6758. Proponent of the motion to commit need not qualify as opposed to the resolution. *Manual* § 60.
- Withdrawal of a resolution before action is taken thereon. Deschler Ch 1 § 10.6.
- The motion to lay on the table. 5 Hinds § 5390; Deschler Ch 1 § 9.
- The motion to postpone to a day certain. Deschler Ch 1 § 10.7.
- The motion to adjourn. 1 Hinds § 89; Deschler Ch 1 § 9.

Specific standing rules of the House held *not* applicable before adoption of its formal rules include:

- The rule permitting 40 minutes of debate after the moving of the previous question on a matter on which there has been no debate. 5 Hinds § 5509.
- The three-day availability rule for the consideration of committee reports. Deschler Ch 1 § 12.9.

§ 8. Taking Up Legislative Business

Generally

Congress is not assembled until both the House and Senate are in session with a quorum present. 6 Cannon § 5. Once the two Houses have assembled, elected officers, sworn Members, and adopted rules, the resumption of legislative business is in order. 1 Hinds §§ 130, 140, 237; Deschler Ch 1 § 11. In rare instances a major bill has been considered and passed even before the completion of organization by the adoption of rules. Deschler Ch 1 § 12.8. However, a bill will not be considered in the House before the administration of the oath to Members-elect because of the statutory requirement that the oath precede the consideration of general business. 2 USC § 25. As a matter of long-established custom, the two Houses usually do not begin transacting legislative business at the beginning of a Congress until after the President has delivered his state of the Union message. 1 Hinds §§ 81, 122–125; Deschler Ch 1 § 11. However, on two occasions the House, as part of the resolution adopting its standing rules, adopted a special order providing for the immediate consideration of a bill introduced that

day. 104–1, Jan. 4, 1995, p 463; 106–1, Jan. 6, 1999, p ____. On occasion the House has convened for its second session on January 3, or on another day by law, but then conducted no legislative business (including approval of its Journal or referral of bills) for several days. *Manual* § 84.

Old Business

Upon convening for a second or subsequent session during the term of a Congress, the House resumes all business that was pending before the House or its committees at the adjournment *sine die* of the preceding session. Rule XI clause 6; *Manual* § 814; 5 Hinds § 6727. Similarly, conference business between the two Houses continues over an adjournment between the first and second sessions of a Congress. 5 Hinds §§ 6760–6762. However, because past proceedings of one Congress do not bind its successor, business remaining at the end of one Congress does not carry over to the beginning of a new Congress. Deschler Ch 1 § 11.

Bills may be placed in the hopper on opening day and are referred as expeditiously as possible following adoption of the rules. However, due to the large number of bills introduced on opening day, the Speaker may delay their referral but print the referral as having been made on opening day. 106–1, Jan. 6, 1999, p ____.