

# *Party Organization*

## **A. The Democratic Caucus and the Republican Conference**

### **§ 1. In General**

From the earliest days of the American republic, Members of Congress have grouped themselves into different factions, blocs, or parties.<sup>(1)</sup> Even in the first Congresses, under the presidencies of George Washington and John Adams, Members divided along pro-administration and anti-administration lines to signal agreement or disagreement with the policies of the executive branch. Differing groups have also frequently formed along regional lines, with Members from similar areas coming together to promote interests specific to their geographic locale. Conflicts between regional factions have been common in American history, most notably in the years leading up to the Civil War.

By far the most consequential division in American history has been between the two major political parties that coalesced after the Civil War—the Democratic party and the Republican party.<sup>(2)</sup> Although there have been many instances of House Members belonging to third parties or claiming independence from either party,<sup>(3)</sup> for over 150 years most Members have

1. *Parliamentarian's Note*: In 1796, George Washington penned a “Farewell Address” to the American people, in which he warned that the spirit of faction might weaken constitutional government and thus deprive the people of their rights. In 1862, a special joint session of Congress was held to hear a reading of the address, beginning a tradition of annual readings of the address on the House floor. 5 Hinds’ Precedents § 7070. The tradition was discontinued in the House after 1979 (Deschler’s Precedents Ch. 36 § 3.6) but the Senate still conducts an annual reading of the address. See, e.g., 163 CONG. REC. S1424–S1428 [Daily Ed.], 115th Cong. 1st Sess. (Feb. 27, 2017).
2. *Parliamentarian's Note*: The Democratic party traces its origins back to the 1830s, and was formed from the remnants of the Democratic–Republican party founded by Thomas Jefferson and James Madison. The Republican party (also known as the G.O.P. or “Grand Old Party”) was founded in 1854 as primarily an anti-slavery party opposed to the extension of slavery into new states and territories. See ROBERT V. REMINI, *THE HOUSE*, 116, 150 (Harper Collins 2006).
3. For issues relating to committee assignments for independent or third-party Members, see § 8, *infra*.

formally identified as members of either the Democratic party or the Republican party.<sup>(4)</sup> The name for the Democratic party organization in the House is the Democratic Caucus, while the name for the Republican party organization is the Republican Conference.<sup>(5)</sup>

This chapter describes the role of party organization in the overall legislative and organizational framework of the House. The parliamentary significance of how the major party caucuses are organized is quite limited. The Democratic party and the Republican party are private institutions that are, by their very nature, separate and distinct entities from the public institution that is the United States House of Representatives. Thus, the rules and precedents of the House do not govern the internal structure and procedures of the House subunits of these organizations. To the extent that the standing rules of the House address the respective major party caucuses, it is primarily as an acknowledgment that such external organizations exist and have created their own leadership positions and internal hierarchies—factors that can be useful in providing an equitable distribution of such things as debate time on the floor, committee assignments, funding for staff, and resources of the House generally. The party organizations can therefore be seen as the conduits through which Members advance their interests, defend their rights and privileges as Members, and negotiate compromises with Members affiliating with the other party. However, for the most part, the formal rules of the House treat Members as individuals and rarely take cognizance of Members' party affiliation.<sup>(6)</sup>

However, the existence of majority and minority divisions within a legislative body is a fact that cannot be wholly ignored by the established rules of procedure. Thomas Jefferson, in his *Manual of Parliamentary Practice*, referenced the experience of the British House of Commons to comment on

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4. *Parliamentarian's Note*: In the 35th Congress (1857), Democrats and Republicans held the majority of all seats in the House for the first time, with fifteen additional Members affiliating with neither major party. Throughout the remainder of the 19th century, each Congress saw at most a few dozen Members elected under a variety of different party labels—"Americans," "Unionists," "Nationals," "Silverites," "Populists," as well as "Independent Democrats" and "Independent Republicans." In the early part of the 20th century, House Members were occasionally elected on "Socialist," "Progressive," or "Farm-Labor" tickets, but the vast majority continued to come from either the Democratic or Republican parties. Since the Second World War, not more than five Members in any Congress have chosen to formally affiliate with neither of the major political parties. History, Art & Archives, House of Representatives, PARTY DIVISIONS OF THE HOUSE OF REPRESENTATIVES, [www.history.house.gov/institution/Party-Divisions/Party-Divisions](http://www.history.house.gov/institution/Party-Divisions/Party-Divisions) (Mar. 27, 2017).

5. In this chapter, the generic term "caucus" will sometimes be used to describe either party organization.

6. See § 1.1, *infra*.

the function of rules of proceeding as a check on the actions of the majority: “[I]t is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents...the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check...”<sup>(7)</sup> On the other side of the ledger, former Speaker Thomas B. Reed of Maine, who presided over a period of intense partisanship that saw the minority party engage in a variety of dilatory and obstructive tactics to delay and defeat legislative measures, also provided commentary on this issue. Writing a century after Jefferson, Reed remarked, “[I]f tyranny of the majority is hard, the tyranny of the minority is simply unendurable. The rules, then, ought to be rearranged as to facilitate the action of the majority...”<sup>(8)</sup> However the majority and minority divisions in the House are established, the rules of proceeding must necessarily balance the interest of protecting the minority from arbitrary rule against that of facilitating the orderly process by which the majority may express its will.

### ***The Speaker as Party Leader***

The Speaker of the House assumes a dual role of both institutional representative and party leader.<sup>(9)</sup> The earliest Speakers of the House tended to view the position as akin to that of Speaker of the British House of Commons, *i.e.*, that of a neutral arbiter, purposefully avoiding partisan sentiment. However, as early as the speakership of Henry Clay of Kentucky in the 12th Congress (1811), the Speaker has taken on, in addition to institutional responsibilities, the role of leader of the party or faction nominating such individual for the office. The history of the speakership reveals considerable variability in the nature of the office, with some periods characterized by strongly partisan Speakers forcefully advancing their party’s agenda, and other periods of less assertive Speakers allowing other individuals or entities (the Majority Leader, the party caucus, committees, etc.) to direct the legislative business of the House. Speakers often cede some amount of agenda-setting authority to the Majority Leader, who is more likely to actively

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7. *House Rules and Manual* § 283 (2017).

8. Thomas B. Reed, *Rules of the House of Representatives*, CENTURY MAGAZINE, November 1888 at 795.

9. The office of Speaker is discussed in full elsewhere in this series. See Precedents (Wickham) Ch. 6. For earlier treatments, see Deschler’s Precedents Ch. 3 § 1 and Deschler’s Precedents Ch. 6 §§ 1–8.

direct business on the floor of the House and advocate for his or her party's positions.<sup>(10)</sup> Nevertheless, Speakers have (especially in recent years) engaged in debate and voted on legislative measures brought before the House.<sup>(11)</sup>

A common path to the speakership runs through the internal party organizations. Many Speakers have previously served as Majority Leader or Majority Whip prior to their election as Speaker.<sup>(12)</sup> Similarly, it has often been the case that the Minority Leader in one Congress will be elected Speaker in the next Congress following a switch in party control.<sup>(13)</sup>

Despite the Speaker's function as party leader for the majority caucus, Members of the House have often paid tribute to Speakers for their official role as presiding officer and representative of the House as an institution. For many years, as a Congress prepared for adjournment *sine die*, the minority party (often through the Minority Leader or Minority Whip) would offer a resolution formally thanking the Speaker for the impartial manner in which the Speaker exercised the nonpartisan, institutional duties of the office.<sup>(14)</sup>

### ***The Role of Chair of Caucus or Conference***

At the beginning of a Congress, the Democratic Caucus and the Republican Conference each elect an individual to serve as chair of their respective party caucuses. This position is technically the highest-ranking officer in the caucus, but the responsibilities of the office are primarily internal to the caucus. As a result, Caucus and Conference chairs have no institutional role within the House of Representatives.<sup>(15)</sup> To the extent that such individuals come to the attention of the House, it is typically to communicate information from the relevant caucus to the overall membership.<sup>(16)</sup> Caucus or Conference chairs have traditionally offered certain resolutions relating to administrative or organizational matters, such as resolutions electing officers

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10. For an earlier example of the Speaker making an announcement regarding a party caucus meeting, see Deschler's Precedents Ch. 3 § 5.2.
  11. See Precedents (Wickham) Ch. 6.
  12. *Parliamentarian's Note*: The last Majority Leader to be elevated to the position of Speaker was Rep. Thomas Foley of Washington in 1989. See § 6.3, *infra*.
  13. *Parliamentarian's Note*: Speakers Nancy Pelosi of California and John Boehner of Ohio each served as Minority Leader in the Congress preceding the Congress in which they were first elected Speaker.
  14. See Deschler's Precedents Ch. 3 §§ 3.17, 12.3, 21.9, and 24.1. This custom has not been followed in recent years.
  15. For more on functions of the Caucus or Conference chair within the party organization, see § 3, *infra*.
  16. See Deschler's Precedents Ch. 3 §§ 3.5–3.8, 12.1.

of the House,<sup>(17)</sup> resolutions electing Members to committees,<sup>(18)</sup> and resolutions electing a Speaker pro tempore.<sup>(19)</sup> Caucus or Conference chairs have served as Speakers pro tempore,<sup>(20)</sup> and they have administered the oath of office to a newly-elected Speaker pro tempore.<sup>(21)</sup> The only reference to caucus chairs in the standing rules of the House occurs in rule X<sup>(22)</sup> and relates to requirements of caucus affiliation for purposes of committee assignments. Under these rules, the chair of the respective party caucus must inform the Speaker whenever a Member ceases to be a member of that caucus.<sup>(23)</sup>

### ***Caucus and Conference Rules***

Every Congress, the Democratic Caucus and the Republican Conference each adopt internal rules of procedure to govern caucus proceedings.<sup>(24)</sup> These procedural rules are not rules of the House but are instead internal rules applicable to the proceedings of the respective party caucus only.<sup>(25)</sup>

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17. See Deschler's Precedents Ch. 3 § 3.9.
  18. See Deschler's Precedents Ch. 3 § 3.12.
  19. See Deschler's Precedents Ch. 3 § 3.4.
  20. See Deschler's Precedents Ch. 3 § 3.17. For more on the Speaker pro tempore, see Deschler's Precedents Ch. 6 §§ 9–14 and Precedents (Wickham) Ch. 6.
  21. See Deschler's Precedents Ch. 3 § 3.16.
  22. Rule X, clause 5(b), *House Rules and Manual* § 760 (2017) and rule X, clause 10(a), *House Rules and Manual* § 782 (2017).
  23. For more on the role of the party caucus in assigning Members to committees, see § 8, *infra*.
  24. *Parliamentarian's Note*: In the past, the internal procedural rules of the Democratic Caucus and Republican Conference were not made publicly available. In recent years, the Republican Conference has published their Conference rules on their website. In the 115th Congress, the House Committee on Rules published a committee print containing selected Democratic Caucus and Republican Conference rules covering a 30-year period. See Rules Committee Print 115–37. For earlier discussions of the history and evolution of Caucus and Conference rules (particularly the significant reforms undertaken by the Democratic Caucus at the beginning of the 1970s), see JULIAN ZELIZER, *ON CAPITOL HILL: THE STRUGGLE TO REFORM CONGRESS AND ITS CONSEQUENCES, 1948–2000* 135–151 (2004); NORMAN ORNSTEIN, *CONGRESS IN CHANGE: EVOLUTION AND REFORM* 88–114 (1975); ROBERT PEABODY, *LEADERSHIP IN CONGRESS: STABILITY, SUCCESSION, AND CHANGE* 205–233 (1976); DAVID ROHDE, *PARTIES AND LEADERS IN THE POSTREFORM HOUSE* 65–69 (1991); ROGER DAVIDSON AND WALTER OLESZEK, *CONGRESS AGAINST ITSELF* 192–219 (1977); and “*Congressional Reforms Made in 1975*,” in *CQ Almanac 1975*, 31st ed., at 26–40 (CONGRESSIONAL QUARTERLY 1976). See also GEORGE GALLOWAY, *THE LEGISLATIVE PROCESS IN CONGRESS*, 327–29 (1953).
  25. *Parliamentarian's Note*: As these internal caucus rules are not part of the House rules, their analysis is better suited for the academic or policy sphere than a compilation of House precedents. A modern reality is that the rules and practices in the Caucus or Conference are often elevated into the rules of the House. The discussion here will be

However, throughout their history, both Caucus and Conference rules have tended to rely (either explicitly or implicitly) on House rules as a frame of reference for appropriate procedures. For many years, the Republican conference rules have provided that, “The Rules of the House of Representatives, insofar as they are applicable, shall govern the proceedings of the Republican Conference.”<sup>(26)</sup> Similarly, the rules of the Democratic Caucus for the 115th Congress provided that “[t]he procedures, motions, and five-minute rule that apply when the House of Representatives is operating as the Committee of the Whole, with such special rules as may be adopted, shall govern the meetings of the Caucus.”<sup>(27)</sup> Other Caucus and Conference rules mimic House rules or procedures to some extent. Both the Democratic Caucus and the Republican Conference rules provide that a member of the caucus may be expelled by a two-thirds vote,<sup>(28)</sup> mirroring the expulsion provisions of the Constitution applicable to the House.<sup>(29)</sup> Likewise, both Caucus and Conference rules allow such rules to be suspended by a two-thirds vote,<sup>(30)</sup> mirroring the House rule on motions to suspend.<sup>(31)</sup> Just as the House is required by the Constitution<sup>(32)</sup> to keep a Journal of its proceedings, each party caucus also keeps a journal or transcript of its proceedings.<sup>(33)</sup>

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limited to areas where Caucus or Conferences rules have had a direct impact on House operations, or where rules of proceeding at the caucus level have shaped or influenced the rules of the House.

26. Rules Committee Print 115–37, Republican Conference, 100th Cong., Rule 9 and Republican Conference, 115th Cong., Rule 6(a). Republican Conference rules contain additional references to House rules. For example: “The procedures for reconsideration shall be consistent with the Rules of the House.” (Rules Committee Print 115–37, Republican Conference, 115th Cong., Rule 6(b)(2)); “Meetings of the Republican Conference shall be conducted in accordance with the applicable provisions of the Rules of the House of Representatives, including rule XVII, that govern decorum and the personal behavior of Members of the Conference.” (Rules Committee Print 115–37, Republican Conference, 115th Cong., Rule 5(d)); and “No motion shall be available other than those described in clause 4 of rule XVI (relating to the precedence of motions) or rule XIX (relating to motions after the amendment stage) of the Rules of the House of Representatives.” (Rules Committee Print 115–37, Republican Conference, 115th Cong., Rule 6(b)(1)).
27. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 9(C)(1).
28. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 1(A)(3) (“The Caucus may expel any Member by a two-thirds vote.”); Rules Committee Print 115–37, Republican Conference, 115th Cong., Rule 1(b) (“A 2/3 vote of the entire membership shall be necessary to expel a Member of the Conference. Proceedings for expulsion shall follow the rules of the House of Representatives, as nearly as practicable.”)
29. *House Rules and Manual* §§ 62, 63, 66 (2017).
30. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 9(C)(2) and Republican Conference, 115th Cong., Rule 6(e). The Republican Conference rule requires that the motion to suspend be seconded by a majority, if demanded.
31. Rule XV, clause 1, *House Rules and Manual* §§ 885–891 (2017).
32. *House Rules and Manual* §§ 68–74 (2017).
33. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 9(E) and Republican Conference, 115th Cong., Rule 10. Although Democratic Caucus rules now refer

Many rules of the party caucuses set out specific policies for party members to adhere to when exercising their rights and privileges on the floor of the House. Thus, Caucus or Conference rules may address issues such as: the election of Speaker and other officers of the House;<sup>(34)</sup> motions to suspend House rules;<sup>(35)</sup> special orders of business reported by the Committee on Rules;<sup>(36)</sup> motions to recommit and motions to instruct conferees;<sup>(37)</sup> congressional earmarks;<sup>(38)</sup> conference committees;<sup>(39)</sup> and conduct of committee chairs.<sup>(40)</sup> As noted elsewhere,<sup>(41)</sup> the most significant interaction between Caucus and Conference rules occurs in the area of committee and subcommittee assignments.<sup>(42)</sup>

Because the House does not take formal cognizance of the internal rules of the Democratic Caucus or the Republican Conference, the evolution of such rules over time is difficult to trace.<sup>(43)</sup> Nevertheless, it is possible to describe certain general trends that have played a role in the recent history of the House. One of the most obvious changes that occurred in both Caucus and Conference rules in the 1990s was recognition by both parties that either party may constitute the majority party in any Congress. Previously, the Democratic party's status as the majority party in the House of Representatives continuously from 1955–1995 had resulted in an assumption in

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to a “transcript” of its proceedings, prior iterations of the rule referred to a “Caucus Journal.” See, *e.g.*, Rules Committee Print 115–37, Democratic Caucus, 110th Cong., Rule 9.

34. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 6.
35. Rules Committee Print 115–37, Democratic Caucus, 115h Cong., Rule 38 and Republican Conference, 115th Cong., Rule 28.
36. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 35.
37. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 39.
38. Rules Committee Print 115–37, Republican Conference, 115th Cong., Standing Order for the 115th Congress.
39. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 41.
40. Rules Committee Print 115–37, Republican Conference, 115th Cong., Rule 14(d)(1).
41. See Division C, *infra*.
42. *Parliamentarian's Note*: Internal Caucus and Conference rules both provide a complex set of procedures for assigning Members to committees and subcommittees. These rules may provide nominating and balloting procedures, selection of committee and subcommittee chairs, terms limits or other restrictions on membership, special rules for particular committees, and procedures for filling vacancies. However, it is beyond the scope of this work to provide a comprehensive analysis of these committee assignment procedures. The reader is encouraged to consult external sources for more information.
43. *Parliamentarian's Note*: In the 115th Congress, the House Committee on Rules published a committee print containing sets of Caucus and Conference rules that covered several decades at prescribed intervals. See Rules Committee Print 115–37. The reader may consult this House document to see the evolution of Caucus and Conference rules from the 100th Congress to the 115th Congress. For an earlier publication of Caucus and Conference rules, see 8 Cannon's Precedents §§ 3609, 3610.

both Caucus and Conference rules that this state of affairs would persist indefinitely. Thus, in the 1990s, the Democratic Caucus added rules governing situations where the Democratic party was the minority party,<sup>(44)</sup> while the Republican Conference revised its rules to govern cases where the Republican party was in the majority.<sup>(45)</sup>

In response to a series of ethics cases in the 1970s and 1980s (in particular the ABSCAM scandal), the Democratic Caucus added provisions to its rules to address the status of Members who had been indicted or convicted of certain crimes, or who had been censured by the House.<sup>(46)</sup> The Republican Conference added similar provisions to its rules in the 1990s.<sup>(47)</sup> These ethics rules typically require an affected Member to step aside temporarily from certain leadership or committee positions until the matter is resolved, or provide for automatic replacement.<sup>(48)</sup>

Another area where party caucus rules influenced House procedure has been the imposition of term limits on committee service. The idea of placing term limits on committee chairs and restricting simultaneous service on multiple committees originated within the party caucuses as a method of distributing committee assignments equitably among members of the caucus.<sup>(49)</sup> These types of restrictions were eventually incorporated directly into the standing rules of the House in the 104th Congress.<sup>(50)</sup>

House procedure with regard to motions to suspend the rules has been influenced indirectly by party caucus rules that prescribe certain policies to be followed by the Speaker when recognizing Members for such motions. Under the standing rules of the House, the Speaker has virtually unlimited discretion to recognize Members to offer motions to suspend the rules on

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44. Compare, e.g., Rules Committee Print 115–37, Democratic Caucus, 100th Cong., Rule 2 to Democratic Caucus, 105th Cong., Rule 2.

45. Compare, e.g., Rules Committee Print 115–37, Republican Rules, 100th Cong., Rule 2 to Republican Conference, 105th Cong., Rule 2.

46. Rules Committee Print 115–37, Democratic Caucus, 100th Cong., Rules 47–48.

47. Rules Committee Print 115–37, Republican Conference, 105th Cong., Rules 25–27.

48. For more on party caucus disciplinary issues, see § 3, *infra*.

49. Rules Committee Print 115–37, Democratic Caucus, 100th Cong., Rules 18 and 24. In the 100th Congress, Rep. Robert Lagomarsino of California led a task force within the Republican Conference to revise methods for assigning members of the Conference to committees, including restrictions and limitations on service. See Rules Committee Print 115–37, Republican Conference, 100th Cong., Rule 14.

50. The current rules relating to term limits and restrictions on committee service are rule X, clause 5(b)(2), *House Rules and Manual* § 760 (2017) and rule X, clause 5(c)(2), *House Rules and Manual* § 761 (2017). See also Division C, *infra*. Although the idea for term limits originated in the Republican Conference, the limitations in the standing rules have persisted in both Republican and Democratic majorities.

specified calendar days or at the end of a session.<sup>(51)</sup> However, under Caucus and Conference rules, the Speaker is required to abide by certain guidelines when deciding which measures should be taken up on suspension days.<sup>(52)</sup> These guidelines and policies have expanded over the years<sup>(53)</sup> and may address notification procedures, committee consideration, restrictions on celebratory or commemorative measures, and cost estimate requirements or other budgetary restrictions.<sup>(54)</sup>

**§ 1.1 It is not a proper parliamentary inquiry to request the Chair to inform the House as to the party membership of cosponsors to a bill or resolution.**

On December 13, 2011,<sup>(55)</sup> a Member propounded the following parliamentary inquiry:

PARLIAMENTARY INQUIRY

Mr. [James] MCGOVERN [of Massachusetts]. Mr. Speaker, before I begin, I have a parliamentary inquiry.

The SPEAKER pro tempore.<sup>(56)</sup> The gentleman will state his inquiry.

Mr. MCGOVERN. Mr. Speaker, can you tell us how many Democrats have cosponsored H.R. 3630?

The SPEAKER pro tempore. The gentleman has not stated a parliamentary inquiry but may engage that point in debate.

**§ 2. Role of Parties at Organization**

Following congressional elections in November,<sup>(1)</sup> each party holds an “organizational” caucus to prepare for the upcoming session in January. By law,<sup>(2)</sup> the Majority Leader and the Minority Leader are authorized to call a meeting of their respective caucuses “...for the purpose of taking all steps necessary to achieve the prompt organization of the Members and Members–elect...” of each party. The law further provides for reimbursement of

51. Rule XV, clause 1, *House Rules and Manual* § 885 (2017).

52. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 38 and Republican Conference, 115th Cong., Rule 28.

53. Compare, e.g., Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 38 and Rules Committee Print 115–37, Democratic Caucus, 100th Cong., Rule 38.

54. Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 38 and Republican Conference, 115th Cong., Rule 28.

55. 157 CONG. REC. 19846, 112th Cong. 1st Sess.

56. Robert Dold (IL).

1. 2 U.S.C. § 7.

2. 2 U.S.C. § 29a. See also *House Rules and Manual* § 1126 (2017).