

**MEMORANDUM**

October 18, 2023

**Subject:** Election of a Speaker Pro Tempore

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**This memorandum was prepared to enable distribution to more than one congressional office.**

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This memorandum was prepared in response to multiple inquiries concerning the process for electing a Speaker pro tempore of the House. It summarizes relevant House Rules and precedents on the authorities of a Speaker pro tempore, relying on the discussion of the procedures and practices in *Precedents of the U.S. House of Representatives*, vol. 2, ch. 6, §§8-12.<sup>1</sup> The memorandum then briefly outlines a potential process for considering a resolution electing a Speaker pro tempore.

Only the Office of the House Parliamentarian can provide authoritative guidance on the application of House rules and precedents. Members of Congress and their staff are encouraged to consult the Parliamentarian, particularly on questions concerning expected action on the floor.

## **Authorities of an Appointed Speaker Pro Tempore Versus Those of an Elected Speaker Pro Tempore**

The House has long distinguished between a Speaker pro tempore *appointed* to that role by the Speaker of the House, and a Speaker pro tempore *elected* by the full House (usually through House approval of a simple resolution).<sup>2</sup>

### ***Routine Appointment of Speaker Pro Tempore (House Rule I clause 8(a)-(b)(2))***

An appointed Speaker pro tempore is “merely a temporary substitute for the Speaker.”<sup>3</sup> House Rule I, clause 8 permits the Speaker to appoint a Member to “perform the duties” of the Chair for a maximum of

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<sup>1</sup> *Precedents of the U.S. House of Representatives*, 115<sup>th</sup> Cong. 1<sup>st</sup> sess., H.Doc. No. 115-62 (Washington, GPO, 2019) (hereinafter *Precedents* (Wickham)). The volume is available online, referred to as the 2017 series, on the GovInfo website of the U.S. Government Publishing Office: <https://www.govinfo.gov/collection/precedents-of-the-house>.

<sup>2</sup> The published precedents of the House use the terms “appointed Speaker pro tempore” and “designated Speaker pro tempore” interchangeably, because there “is no parliamentary difference between the two formulations” (*Precedents* (Wickham), ch. 6, §8, p. 498).

<sup>3</sup> *Precedents* (Wickham), ch. 6, §11, p. 510.

three legislative days, except in the case of an illness.<sup>4</sup> If the Speaker is ill, the appointment can last as long as 10 legislative days, but such an appointment would be subject to approval by the full House, usually accomplished by agreeing to a simple resolution.<sup>5</sup> The House, in recent Congresses, has also waived the three-day limit, both by unanimous consent and by approving simple resolutions that did so.<sup>6</sup>

Appointment of a Speaker pro tempore under this clause to serve as presiding officer on the House floor is common: the Speaker of the House does not routinely preside over floor business. Many of the duties of the Chair are guided by long-standing precedent, and, in this sense, presiding might be characterized as a ministerial task. In cases when the discretion of the Chair might be required in presiding, the intentions of the Speaker may be communicated in advance to the Speaker pro tempore. When the Speaker cannot be present at the start of a day's session, the appointment of a Speaker pro tempore is usually accomplished through a letter written by the Speaker, read aloud to the House by the Reading Clerk.<sup>7</sup>

The authorities of an appointed Speaker pro tempore are constrained by House Rules and precedents. For example, an appointed Speaker pro tempore may not appoint Members to serve on a conference committee with the Senate, or to external boards and commissions—although the Speaker pro tempore can announce the Speaker's appointment of Members from the chair.<sup>8</sup> An appointed Speaker pro tempore also cannot administer the oath of office to Members-elect, or sign enrolled bills and joint resolutions without the approval of the House.<sup>9</sup> Expanding the authorities of an appointed Speaker pro tempore has occasionally been done with the unanimous consent of the House.<sup>10</sup>

### *Election of Speaker Pro Tempore (House Rule I, clause 8(b)(1) and 8(b)(3))*

In contrast to an appointed Speaker pro tempore, an elected Speaker pro tempore “assumes virtually all the duties, authorities, and prerogatives of the Speaker of the House.”<sup>11</sup> This Member is not merely standing in temporarily as the presiding officer on the floor, but has been authorized by the full House to exercise the authorities of the Speaker. An elected Speaker pro tempore is therefore administered the oath of office by another Member after the election.<sup>12</sup> House Rule I, clause 8(b)(1) requires that the House elect a Speaker pro tempore in the event the Speaker is absent and has not appointed a Speaker pro

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<sup>4</sup> The House has interpreted this clause to require the Speaker to open the House, either for morning hour or legislative business, at least every fourth legislative day (*Precedents* (Wickham), ch. 6, §10, p. 502; *Constitution, Jefferson's Manual, and Rules of the House of Representatives, One Hundred Eighteenth Congress, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess.*, H.Doc. 117-161 (Washington, GPO, 2023), §634).

<sup>5</sup> See *Precedents* (Wickham), ch. 6, §10.3, pp. 503, 505.

<sup>6</sup> See, for example, Sec. 3 of H.Res. 5, 118<sup>th</sup> Congress, providing that “(t)he Speaker may appoint Members to perform the duties of the Chair for the duration of a district work period described in paragraph (1) as though under clause 8(a) of rule I.”

<sup>7</sup> Appointment of a Speaker pro tempore can also occur throughout the day “informally and off the record,” as different Members take turns presiding. *Deschler's [and Deschler-Brown] Precedents of the House of Representatives, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess.*, H.Doc. 94-661 (Washington: GPO, 1977) (hereinafter *Deschler's*), ch. 6, §12, p. 559; *Precedents* (Wickham) ch. 6, §11, p. 511.

<sup>8</sup> *Precedents* (Wickham), ch. 6, §11, p. 512.

<sup>9</sup> House Rule I, clause 8(b)(2) allows the Speaker, with approval of the House, to appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions. In recent Congresses, the approval of the House has been given to a list of Members by unanimous consent (*Precedents* (Wickham) ch. 6, §9, p. 498). See, for example, in the 118<sup>th</sup> Congress, *Congressional Record*, daily edition, vol. 169 (Jan. 9, 2023), p. H74.

<sup>10</sup> By unanimous consent, the House has authorized an appointed Speaker pro tempore to administer the oath of office to a Member-elect (*Deschler's*, ch. 6, §12.8, p. 563-564) and authorized the Speaker pro tempore to appoint Members to select committees, joint committees, and external boards and commissions (*Precedents*, (Wickham), ch. 6, §11, p. 511).

<sup>11</sup> *Precedents* (Wickham), ch. 6, §9, p. 498.

<sup>12</sup> The oath is administered by the Speaker when the election was in anticipation of the absence of the Speaker, or by another Member in the Speaker's absence (*Precedents*, (Wickham), ch. 6, §9.2, pp. 500-502).

tempore pursuant to this rule. Clause 8(b)(3) of the same rule provides the House the option of electing a Speaker pro tempore in the event that the Office of the Speaker is vacant.

The House has elected a Speaker pro tempore to take actions beyond the scope of the authorities of an appointed Speaker pro tempore when the Speaker was unavailable. A Speaker pro tempore has been elected shortly before swearing in a new Member of the House, for example.<sup>13</sup> Under an earlier practice, the House would sometimes elect a Speaker pro tempore if an appointed Speaker pro tempore had opened the House for three legislative days, and the Speaker would not be available on the fourth. (In current practice this requirement is more likely to be waived by unanimous consent or adoption of a resolution.<sup>14</sup>) Prior to 1985, the House would sometimes elect a Speaker pro tempore for the purpose of signing enrolled bills, but at the start of the 99<sup>th</sup> Congress (1985-1986), House Rule I was changed to allow the Speaker to appoint Members for this purpose with the approval of the House.<sup>15</sup>

### *Speaker Pro Tempore in the Case of a Vacancy (House Rule I, clause 8(b)(3))*

Since the start of the 108<sup>th</sup> Congress (2003-2004), House Rules have also distinguished a third type of Speaker pro tempore, one pre-designated in the event that the Speaker becomes incapacitated or the Office of the Speaker is vacant. The rule requires that, as soon as practicable after the Speaker is chosen by the House, the Speaker submit a list of Members to the Clerk who can act as Speaker pro tempore. House Rule I, clause 8(b)(3) further provides:

In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tempore until the election of a Speaker or a Speaker pro tempore. Pending such election the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

A Member has become Speaker pro tempore pursuant to these terms once, when the House approved a resolution vacating the Office of the Speaker on October 3, 2023.<sup>16</sup> After assuming the Chair, the Speaker pro tempore announced that, pursuant to the rule, he had been bestowed the authorities of the Office of the Speaker to the extent necessary and appropriate to the end of electing a new Speaker.<sup>17</sup>

## **Process for Electing a Speaker Pro Tempore**

The House elects a Speaker pro tempore by approving a simple resolution (H.Res.) declaring that a Member named in the resolution has been elected. The resolution also typically limits the length of time the Member can serve as Speaker pro tempore.<sup>18</sup> For example, the text of H.Res. 553, approved in the 104<sup>th</sup> Congress (1994-1995), provided:

That the Honorable Robert S. Walker, a Representative from the Commonwealth of Pennsylvania, be, and he is hereby, elected Speaker pro tempore through the legislative day of Tuesday, October 1, 1996.

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<sup>13</sup> *Precedents* (Wickham), ch. 6, §12.4, pp. 525-526; *Congressional Record*, daily edition, vol. 144 (Mar. 17, 1998), p. H1173.

<sup>14</sup> *Precedents* (Wickham), ch. 6, §12, p. 521 and footnote 5, above.

<sup>15</sup> *Precedents* (Wickham), ch. 6, §12, p. 521; *Deschler's*, ch. 6, §13.2, pp. 571-572.

<sup>16</sup> H.Res. 757 (118<sup>th</sup> Congress), *Congressional Record*, vol. 169, October 3, 2023 (daily edition), p. H4978.

<sup>17</sup> As of the date of this memorandum, on the floor, the Speaker pro tempore has performed some duties of the presiding officer, including declaring a recess and announcing approval of the *Journal*. Based on the *Congressional Record* issued since the speakership was declared vacant, the Speaker pro tempore has not exercised certain authorities of the Speaker (or on behalf of the Speaker), including the referral of bills and received executive communications.

<sup>18</sup> See, for example, the five most recent resolutions approved electing a Speaker pro tempore, H.Res. 386, 105<sup>th</sup> Congress (1997-1998), H.Res. 363, H.Res. 471, and H.Res. 553, 104<sup>th</sup> Congress (1995-1996), and H.Res. 249, 103<sup>rd</sup> Congress (1993-1994), identified in *Precedents* (Wickham), ch. 6, §12, p. 521.

Sec. 2. The Clerk of the House shall notify the President and the Senate of the election of the Honorable Robert S. Walker as Speaker pro tempore during the absence of the Speaker.

The most recent resolutions electing a Speaker pro tempore have been agreed to on the House floor after no debate, “due to their uncontroversial nature.”<sup>19</sup> A resolution electing a Speaker pro tempore is privileged for consideration, meaning it can interrupt the regular order of business and be called up by a Member recognized to do so.<sup>20</sup>

In the event the House wished to debate the resolution, it would be considered under the “hour rule,” a mode of proceeding under the rules of the House in which the Member calling up the matter controls the first hour of debate.<sup>21</sup> This set of procedures is most commonly seen when the House is debating a special rule reported by the House Rules Committee providing for the consideration of legislation. The Member controlling the hour might yield time to other members for debate, and might allocate control of half of the hour to a Member opposed to the resolution.<sup>22</sup> The time yielded is often “for debate only,” preventing Members other than the Member who called up the resolution from offering amendments or making other motions in relation to the resolution. Motions of high precedence under House Rule XVI, however, could displace the matter, including a motion to table, which, if agreed to, would adversely dispose of the resolution.<sup>23</sup>

Debate is ended on the resolution when the House agrees to order the previous question on it. The Member who called up the resolution makes that motion, either after some debate or, if half the time has been allocated to a Member opposed, after all time has been used or yielded back. Ordering the previous question brings the House to a vote on the main question (in this case, approval of the resolution).

The procedural steps taken by the House could therefore vary, depending on decisions by the Member managing the first hour of debate and the decision of other Members to offer preferential motions. The following list of steps is provided in response to multiple requests for an example of *possible* proceedings:

- A Member stands and states, “I offer a privileged resolution and ask for its immediate consideration.”
- The Clerk reads the resolution.
  - Note that preferential actions could be taken by another Member, such as moving to table or to adjourn.
- The Member who offered the resolution is recognized to control the first hour of debate. (The Member who offered the resolution might choose to yield half of the time to a Member opposed to the resolution “for purposes of debate only.”)
- After at least some debate, the Member who offered the resolution moves the previous question on it in order to end debate and bring the House to a vote on the resolution.

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<sup>19</sup> *Precedents* (Wickham), ch. 6, §12, p. 523.

<sup>20</sup> *Ibid.*

<sup>21</sup> For a discussion of the hour rule, see Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham, Jr. *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2017) (hereinafter, *House Practice*), ch. 16, §45, and CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*.

<sup>22</sup> See *House Practice*, ch. 16, §15, “although not required to do so by standing rule, majority members in control under the hour rule frequently yield one-half the time to the minority.”

<sup>23</sup> A motion to table or adjourn could be made before the Member who offered the resolution is recognized for one hour, or after the previous question is moved because they are of higher precedence than the previous question. Other motions in clause 4 of Rule XVI, such as to postpone to a day certain or to refer are available, but the previous question is of higher precedence.

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- If the previous question is ordered (without objection, or by voice vote or roll call vote), the House would then vote on the resolution (by voice vote or roll call vote). Both questions require the support of a majority of those voting for approval.
  - If the resolution is agreed to, the elected Speaker pro tempore takes the oath of office. The House would then adopt resolutions instructing the Clerk to notify the Senate and the President of the election of the Speaker pro tempore, if such provisions were not provided in the election resolution.
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