



**The authority of the acting Speaker pro tempore is strictly ministerial and the position's *sole* role is to guide the House toward the election of a new Speaker or Speaker pro tempore:**

- The position was created following the 9/11 terrorist attack to ensure continuity of government, and specifically to provide for the rapid election of a new Speaker, who is second in the presidential order of succession.
- Clause 8(b)(3) of rule I ensures there is a Member with the clear authority to quickly convene the House and preside over a Speaker election if the Speaker is killed or incapacitated.
- The plain language of the rule and the legislative history are clear: the acting Speaker pro tempore has no authority other than taking steps necessary and appropriate to further the election of a new Speaker.
- In fact, the rule contemplates the election of a Speaker pro tempore instead of a Speaker in the event the House cannot quickly elect a Speaker, an unnecessary provision if the acting Speaker pro tempore had the power to oversee the House's regular business, for example.
- Evidence of this limited role will be clear, since bills introduced after the Office of Speaker became vacant will not be referred to committees – a basic legislative task required of the Speaker by clause 2 of rule XII.<sup>1</sup>
- In short, the acting Speaker pro tempore's authority is limited to actions that help the House elect a new Speaker.

### **Background and Legislative History of Clause 8(b)(3) of Rule I**

- 1) Following the September 11, 2001, terrorist attack, Congress contemplated rule changes to ensure continuity of government and to safeguard against any potential loss in the Presidential line of succession – specifically if an emergency resulted in a vacancy in the Office of the Speaker of the House, second in line to the Presidency.

In May 2002, then-Speaker Dennis Hastert established the bipartisan Continuity of Congress Working Group, co-chaired by Representative Christopher Cox, Chairman of the House Policy Committee, and Representative Martin Frost, Chairman of the House Democratic Caucus. The purpose of the Cox-Frost Working Group was:

To study ways to ensure that the legislative branch continues to function in the event that a terrorist attack or other catastrophe kills or incapacitates a large number of Members. Because the Constitution permits the House to “determine the Rules of its Proceedings” and to judge the “Qualifications of its own members,” the Working Group has been studying pertinent rules changes to remedy some of the problems that could be created under such circumstances.<sup>2</sup>

- 2) The Cox-Frost Working Group examined the issue of succession of the Speaker in the event of a vacancy in the Office of the Speaker and drafted an amendment to the House rules to address the matter.

<sup>1</sup> “The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.”—Clause 2(a) of rule XII of the Rules of the House of Representatives.

<sup>2</sup> Cox, Christopher (CA). “The Continuity of Congress Working Group” *Congressional Record* 148: 147 (November 14, 2002) p. E2031

As the Working Group explained in a 2002 letter to then-Chairman of the House Rules Committee David Dreier, which was printed in the Congressional Record:

Current House rules do not explicitly address who would preside over the House in the event that there is a vacancy in the Office of the Speaker. Therefore, if the Speaker and the Clerk of the House die during a catastrophic attack, there would be no living individual authorized to reconvene the House, or call the House into session. To remedy this potential problem, the Working Group has crafted a rule which would allow the Speaker to establish a line of succession for a Speaker pro tempore whose duty would be to preside over the election of a new Speaker or Speaker pro tempore.<sup>3</sup>

- 3) The Cox-Frost working group's proposed amendment was adopted into the standing rules of the House two months later in the 108<sup>th</sup> Congress rules package, along with several other recommendations. The rule, nearly identical to the Cox-Frost proposed amendment, reads:

(3)(A) 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.<sup>4</sup>

- 4) As can be seen in the plain text of the rule, the acting Speaker pro tempore is provided the authority to do only what is "necessary and appropriate" to the end of the election of a new Speaker. This conclusion is further supported by an April 29, 2004, Rules Committee hearing, held after the adoption of the new rule. The bipartisan hearing was held to examine issues associated with the incapacitation of Members and steps that were taken to address the matter. The printed transcript and supporting background from this hearing describes the purpose of the rule change as:

(1) requiring the Speaker to submit a list of designees to serve as Speaker pro tempore for the sole purpose of electing a new Speaker in the event of a vacancy in the Office of the Speaker (clause 8(b)(3) of rule I)<sup>5</sup>

- 5) As the House Parliamentarian at the time of the rule change, Charles W. Johnson, III, further explained in the Appendix to Deshler's Precedents:

While the Clerk for the previous Congress serves as presiding officer for the convening of a new House, there were new rules adopted in 2003 (Rule I clause 8) permitting the Speaker, once elected, to name other sworn Members in a listed order, rather than the Clerk, who would serve as Speakers pro tempore in the event of vacancy in the office of Speaker, solely to preside over the election of a new Speaker—it being considered preferable to have a sworn Member preside wherever possible.<sup>6</sup>

## **Conclusion**

Given the context and reasoning behind the rules change, the plain language of the text, and the subsequent legislative history provided by both Members and the Parliamentarian, it is evident that the acting Speaker pro tempore is empowered *solely* to act in a ministerial capacity to facilitate the election of a new Speaker or Speaker pro tempore. In the view of the rule's authors, this primarily means reconvening the House and presiding over the election, but it could also reasonably be construed to include powers such as recessing the House to allow for party caucus or conference meetings to determine the nominees.

<sup>3</sup> Cox, Christopher (CA). "The Continuity of Congress Working Group" *Congressional Record* 148: 147 (November 14, 2002) p. E2031

<sup>4</sup> 118<sup>th</sup> Congress Rules of the House of Representatives

<sup>5</sup> Rules Committee Hearing, Continuity Of Congress: An Examination of the Existing Quorum Requirement and The Mass Incapacitation Of Members. (April 29, 2004) p. IV

<sup>6</sup> Charles W. Johnson, III, J.D. *Appendix to Deshler's Precedents*, p. 486