

# The powers of an acting House speaker are untested. Here's what we know.

**By Marisa Iati and Amy B Wang**  
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With the ouster of Rep. Kevin McCarthy (R-Calif.) from the role of House speaker — and no consensus pick to replace him — the chamber is operating with an acting speaker, and it's unclear how much authority he has.

The speaker manages the House's institutional business, including bringing up bills for votes. But it is widely accepted that Speaker Pro Tempore Patrick T. McHenry (R-N.C.) does not have the full powers of a speaker who has been elected by House members.

That leaves the chamber in a state of suspended animation, with another deadline approaching in mid-November to pass appropriations bills to fund the federal government.

## **What powers does McHenry have as acting speaker?**

McHenry's authority is determined by House Rule I, Clause 8(b)(3), which was put in place in 2003 and which reads, in part:

“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.”

## Does that mean McHenry can conduct normal House business?

Interpretation of the rule, especially the last few words, is subject to argument. Many scholars say the phrase “necessary and appropriate to that end” means McHenry can only preside over debate and voting regarding choosing a new speaker.

Charles Johnson, a former parliamentarian for the House, previously told The Washington Post that McHenry is “doing the right thing” by keeping his role narrow so far. After he was named acting speaker, McHenry ordered the House into a recess while the Republican conference privately debated who should next fill the chamber’s top role.

Under this interpretation of the rule, the House could not vote to extend government funding until it has determined who will lead the chamber. That could take awhile: The bitter factions in the Republican conference that led to McCarthy’s ouster are likely to influence the election of the next leader.

However, Matt Glassman, a senior fellow at Georgetown University’s Government Affairs Institute, posited in a blog post that an acting speaker could have the full authority of a speaker until someone is elected.

“Since the clause was put in as a continuity of government provision, it seems like we would want the Speaker pro tempore to have as much power as possible in an emergency situation,” Glassman wrote Wednesday. “If all he can do is preside over an election of Speaker, that doesn’t seem particularly important or helpful.”

Glassman later said he was swayed by “strong evidence for the narrow view” after Rep. Jim McGovern (D-Mass.) unearthed a 2004 House Rules Committee description of the rule that stated the temporary speaker served “for the sole purpose of electing a new Speaker.” But Glassman also said that would not necessarily constrain McHenry from acting more broadly if he wanted to.

“It’s still up to the current House” to object or not object to Henry’s actions, Glassman told The Washington Post. “McHenry is going to take action. If people acquiesce to them ... it becomes the new soft precedent.”

As speaker pro tempore, McHenry has already taken unprecedented actions not directly related to the election of a new speaker, Glassman said — namely, ordering former House speaker Nancy Pelosi (D-Calif.) and Rep. Steny H. Hoyer (D-Md.), the former majority leader, to vacate their Capitol hideaway offices.

## **Is there any precedent for this situation?**

The House has not previously ousted a speaker, so no one else has come to serve in the interim role in the way McHenry has. That means this situation is without precedent, and House members are figuring it out as they proceed.

Sarah Binder, who studies congressional and legislative politics at the Brookings Institution, previously told The Post that leaders on Capitol Hill appear to be coalescing around the more limited interpretation of the House rule, meaning that McHenry's powers could be narrow.

Still, she said, “the House is on untested ground.”

Before 2003, there were rules that stated that the House clerk would simply preside over the election of a new speaker in case of an unexpected vacancy. In 2003, new House rules required the speaker to submit a list of names that would serve as temporary speaker in the event of a vacancy.

When former House speaker John A. Boehner announced in September 2015 that he would resign at the end of the following month, he did so pending the election of a new speaker. Paul D. Ryan was elected House speaker on Oct. 29, 2015, and Boehner resigned the next day.

## **Why is it important for the House to have a permanent speaker?**

The speaker — also the leader of the majority party in the House — is one of the most powerful positions in the government: In addition to voting as a representative from their district, the speaker controls the order of business on the House floor.

Specifically, the speaker calls the House to order, allows members to give speeches, decides what bills get votes, appoints key House staff members, and

negotiates with the president and the Senate. The past two speakers have also announced impeachment inquiries into the sitting president.

As previously outlined, how much of those duties an acting speaker can fulfill is up for debate.

## **Is there a scenario where McHenry is elected speaker?**

It is unclear whether McHenry is interested in becoming speaker permanently. Two House Republicans, meanwhile, have announced their intentions to run for speaker: Rep. Steve Scalise (La.) and Rep. Jim Jordan (Ohio).

As majority leader, Scalise is the second-highest-ranking Republican in the House. He also chaired the Republican Study Committee, the largest caucus of Republican House members.

Jordan is chairman of the powerful House Judiciary Committee and has used that position to fight those who are investigating former president Donald Trump.

## **Is the acting speaker in the presidential line of succession?**

The U.S. Constitution specifies that the House speaker is second in line to the presidency after the vice president. That rule would come into play if the president were unable to serve.

But since McHenry does not officially hold the title of speaker, he probably would not be in the line of succession, Binder said. She said the Senate president pro tempore, Sen. Patty Murray (D-Wash.), would probably be the one to take his place.

*Amber Phillips and Dan Rosenzweig-Ziff contributed to this report.*