



The First Day of a New Congress: A Guide to Proceedings on the Senate Floor

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Summary

The Senate follows a well-established routine on the opening day of a new Congress. The proceedings include—

- swearing in Senators elected or re-elected in the most recent general election (approximately one-third of the Senate);
- adopting administrative resolutions;
- adopting standing orders for the new Congress;
- agreeing by unanimous consent to any date, other than the convening date, on which bills and joint resolutions may begin to be introduced; and
- electing a new President pro tempore and one or more Senate officers if there is a vacancy or change in party control.

If an election to a Senate seat is undecided or subject to a determination by the Senate, the majority leader and other Senators may address the Senate's posture on that election.

Other first-day activities might occur as a consequence of specific circumstances, such as providing for a joint session with the House to count electoral votes after a presidential election. After Senators are sworn or after organizational proceedings are completed, the Senate may turn to legislative or executive business or other activities.

Negotiations between the parties over committee sizes and ratios, the parties' committee assignments, and any party leadership changes might begin during the early organization meetings for the new Senate, which occur in November and December following a general election. The committee assignment process may continue after the beginning days of a new Congress.

At some time, usually other than opening day, the Senate adopts committee assignment resolutions. Any changes in Senate party leadership take place in respective party conference meetings. There are no floor votes to ratify leadership changes.

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The Senate Convenes

The Twentieth Amendment to the Constitution directs that a new Congress convene at noon on January 3 in each odd-numbered year, unless the preceding Congress has passed a law designating a different day for the new Congress's convening.

The 112th Congress convened January 5, 2011.¹ In recent years, it has been the exception rather than the rule for a new Congress to begin on January 3. In addition to the 112th Congress, seven out of the preceding eight Congresses began on another date than January 3—

- 104th Congress (January 4, 1995),
- 105th Congress (January 7, 1997),
- 106th Congress (January 6, 1999),
- 108th Congress (January 7, 2003),
- 109th Congress (January 4, 2005),
- 110th Congress (January 4, 2007), and
- 111th Congress (January 6, 2009).

The 107th Congress was only one of these eight to begin on January 3, convening January 3, 2001.

The Vice President presides when the Senate first convenes; the Senate chaplain offers a prayer and the Vice President leads the Senate in the Pledge of Allegiance.² The Vice President then announces the receipt of the certificates and credentials of election of Senators who were newly elected or re-elected in the most recent general election. The reading of these documents is waived by unanimous consent, and they are subsequently printed in full in the *Congressional Record*.³

Oath of Office

The first order of business in a new Senate is the swearing-in of Senators elected or re-elected in the most recent general election. On occasion in recent years, the majority leader or the majority

¹ P.L. 111-289, enacted November 30, 2010.

² For an explanation of who is seated on and near the dais in the Senate, see CRS Report 98-397, *Guide to Individuals Seated on the Senate Dais*, by Valerie Heitshusen.

³ See, for example, The Vice President, "Certificates of Election," *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S1-S4. Senators elected to fill a vacancy may have already been sworn in. For example, Christopher Coons of Delaware won the general election in 2010 to complete the final four years of the term of Senator Joseph Biden, who had been elected Vice President in 2008. Senator Coons was sworn in November 15, 2010. Mark Kirk of Illinois, however, won both a special election and a new term in the general election of 2010. He was sworn in November 29, 2010, to complete the term (expiring January 3, 2011) of Senator Barack Obama, who had been elected President in 2008. Senator Kirk was then sworn in January 5, 2011, for a six-year term concluding January 3, 2017. For information on filling Senate vacancies, see CRS Report R40421, *Filling U.S. Senate Vacancies: Perspectives and Contemporary Developments*, by Thomas H. Neale.

and minority leaders might first be recognized for brief remarks.⁴ If there is a contested or undecided Senate election, the leadership might provide a status report and plan for its resolution, before or after Senators are sworn in.⁵

After the Vice President lays the certificates of election before the Senate and states that their reading will be waived if there is no objection, he then calls Senators who were elected to the front of the chamber, in alphabetical order in groups of four, to take the oath and to also “subscribe to the oath” in the official oath book.⁶ Each Senator may be accompanied by the other Senator from his or her state, the Senator he or she is replacing, or a former Senator.⁷

The oath, which is the same for Representatives and executive and judicial appointees, is as follows:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

An oath is mandated by Article VI of the Constitution; its text is set by statute (5 U.S.C. 3331).⁸

When Senators take the oath, they raise their right hand to swear or affirm, repeating after the Vice President. Many hold a family Bible, a sacred text, or another object in their left hands.⁹ These objects have included family heirlooms and other items meaningful to the individual Senator. Some Senators have held nothing, and nothing is required. There is no requirement that a Bible or anything else be used when the oath is taken.

When the Vice President (or another individual of a Senator’s choosing) and individual Senators subsequently re-enact the swearing-in in the Old Senate Chamber with the Senator’s family, each Senator might hold a Bible, another item, or nothing in his or her left hand. Although photography is not permitted on the Senate floor, photographers are present for the ceremonial swearing-in.

⁴ See, for example, Senators Tom Daschle and Trent Lott, “A Historic Day,” *Congressional Record*, vol. 147, part 1 (January 3, 2001), pp. 1-2.

⁵ See, for example, Senator Trent Lott, “Louisiana Election Contest,” *Congressional Record*, vol. 143, part 1 (January 7, 1997), p. 5. As Majority Leader Lott explained, Senator-elect Mary Landrieu would be seated “without prejudice” to the Senate’s ongoing investigation to determine the outcome of the Louisiana Senate election. By way of contrast, the majority and minority leaders commented very briefly on the undecided Minnesota Senate election between Al Franken and Senator Norm Coleman, which was under consideration by the Minnesota state courts. Senator Harry Reid, “Welcoming the 111th Congress,” *Congressional Record*, daily edition, vol. 155, January 6, 2009, p. S8; and Senator Mitch McConnell, “Minnesota Senate Race,” p. S12.

⁶ Each Senator is allowed to keep the pen he or she uses to sign the historic oath book, which contains the signatures of all U.S. Senators. A Senator signs this book each time he or she takes the oath of office.

⁷ Senate Historian Richard A. Baker, *Traditions*, 110th Cong., 1st sess., S. Pub. 110-11 (Washington, DC: Senate Office of Printing and Document Services, 2007), pp. 3-4, available at <http://www.senate.gov/reference/resources/pdf/Traditions.pdf>. (Hereafter *Traditions*.)

⁸ The President’s oath is set forth in the Constitution (U.S. Const. art. II, § 1, cl. 7).

⁹ *Traditions*, pp. 3-4.

After the Senators have been sworn in, the Vice President recognizes the majority leader, who notes the absence of a quorum. The Vice President directs the Senate clerk to call the roll, and all Senators are normally present to respond.¹⁰

Election of the President Pro Tempore

As provided by the Constitution, the President pro tempore is chosen by the Senate to preside during the absence of the Vice President.¹¹ Referred to as the President pro tem, this majority-party Senator usually has his party's longest continuous Senate service.¹²

When there is a change in party control of the Senate, or when a vacancy in the office of President pro tempore occurs, a new President pro tempore is elected by resolution and then escorted to the front of the chamber to be sworn in by the Vice President. Afterwards, the Senate adopts resolutions to notify the House and the President of the election of the President pro tempore.¹³

Notification to the President and the House

The majority leader offers resolutions that the President (S.Res. 1, 112th Congress) and the House (S.Res. 2, 112th Congress) be formally notified that a quorum of the Senate is assembled and ready to proceed to business. Subsequently, pursuant to the resolution providing for notification of the President, the House and Senate leadership telephone the President with the news that a quorum of each house of Congress has assembled and is prepared to begin its work.

¹⁰ A quorum is the number of Members required to be present in each house for the transaction of business. Under the Constitution (U.S. Const. art. I, sec. 5, cl. 1), a quorum in each house is a majority of the Members: 51 in the Senate and 218 in the House, assuming no vacancies. For an explanation of quorum requirements in the Senate, see CRS Report 98-775, *Quorum Requirements in the Senate: Committee and Chamber*, by Betsy Palmer. A Senator might be absent on opening day due to illness, family needs, or another reason.

¹¹ U.S. Const. art. I, § 3, cl. 5. The Vice President, named in clause 4 as the President of the Senate, usually presides only on opening day, during ceremonial occasions, and when needed to cast a tie-breaking vote.

¹² The President pro tempore holds his office during his Senate term and is not reelected at the beginning of a new Congress. For information on this office, see CRS Report RL30960, *The President Pro Tempore of the Senate: History and Authority of the Office*, by Christopher M. Davis.

¹³ See, for example, "Election of the Honorable Robert C. Byrd as President Pro Tempore," *Congressional Record*, vol. 153, part 1 (January 4, 2007), pp. 65-66, including adoption of S.Res. 4 and S.Res. 5 to notify the President and the House, respectively, of the election of the President pro tempore. In 2007, where the election of Senator Byrd was occasioned by the change in party majority in the Senate, the Senate also adopted a resolution (S.Res. 6) thanking the outgoing President pro tempore and appointing him President pro tempore emeritus. "Expressing the Thanks of the Senate to Senator Ted Stevens and Designating President Pro Tempore Emeritus," *Congressional Record*, vol. 153, part 1 (January 4, 2007), p. 66. See, subsequently, "Electing Senator Daniel K. Inouye President Pro Tempore," *Congressional Record*, daily edition, vol. 156, June 28, 2010, p. S5465, for the election of a new President pro tempore upon Senator Byrd's death.

Daily Meeting Time of the Senate

The Senate establishes its daily hour of meeting by a resolution, which must be renewed each Congress. This resolution is usually offered by the majority leader.¹⁴

Election of Officers

Since the Senate is a continuing body, its officers—the secretary of the Senate, sergeant at arms and doorkeeper, chaplain, and majority and minority party secretaries—do not need to be reelected on the opening day of a new Congress. However, when there is a change in party control or a vacancy at the beginning of a Congress, any new officers are approved by the full Senate. The Senate filled a vacancy at the beginning of the 112th Congress in electing a new secretary for the (Democratic) majority. (Party secretaries are approved by their party conferences and then elected by the Senate.) In addition, since the Senate’s legal counsel and deputy legal counsel are appointed by the President pro tempore for only the duration of a Congress, they are appointed or reappointed every two years and resolutions adopted confirming the appointments’ duration.¹⁵

When party control of the Senate last switched in 2007, the Senate elected a new secretary and sergeant at arms, elected the majority and minority secretaries (since their roles had changed), and appointed the legal counsel and deputy legal counsel for the 110th Congress. The Senate also adopted resolutions to notify the President and the House of the election of the secretary and sergeant at arms.¹⁶

Any changes in Senate party leadership take place in the respective party conference meetings prior to opening day or, if there is a vacancy, at another time. There are no floor votes to ratify these changes.¹⁷

Other First-Day Floor Activities

Other organizational business is taken up on the Senate floor on the first day. At the beginning of the 112th Congress, as at the beginning of preceding Congresses, the Senate adopted en bloc by unanimous consent 12 standing orders for the duration of one Congress.¹⁸ These standing orders addressed—

¹⁴ See, for example, S.Res. 3 (112th Cong.), agreed to in the Senate January 5, 2011.

¹⁵ “Electing Gary B. Myrick as the Secretary for the Majority,” “Appointment of Senate Legal Counsel,” and “Appointment of Deputy Senate Legal Counsel,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S14.

¹⁶ See “Electing Nancy Erickson as the Secretary of the Senate,” et seq., *Congressional Record*, vol. 153, part 1 (January 4, 2007), pp. 66-68. See also CRS Report 98-418, *Senate Administrative Officers and Officials: A Brief Overview*, by Lorraine H. Tong; and the Senate website at http://www.senate.gov/pagelayout/reference/e_one_section_no_tasers/org_chart.htm.

¹⁷ For information on organizational meetings held prior to the formal start of a new Congress, see CRS Report RS21339, *Congress’s Early Organization Meetings*, by Judy Schneider.

¹⁸ Senator Harry Reid, “Unanimous Consent Agreement,” *Congressional Record*, daily edition, vol. 157, January 5, (continued...)

- meetings of the Select Committee on Ethics;
- limiting roll-call votes to 15 minutes;
- authorizing Senators to present reports at the desk;
- allowing 10 minutes daily to each party leader (so-called leader time);
- granting floor privileges to the House parliamentarians;
- forgoing printing of conference reports and joint explanatory statements when they are printed as House reports;
- allowing the Appropriations Committee to file reports during an adjournment or recess of the Senate;
- authorizing the secretary of the Senate to make technical and clerical corrections to engrossments of Senate-passed bills, resolutions, and amendments;
- during an adjournment or recess of the Senate, authorizing the secretary of the Senate to receive presidential messages and, except for House legislation, House messages, and authorizing the President pro tempore to sign enrollments;
- allowing Senators to designate two staff members for floor access during the Senate's consideration of specific matters;
- allowing treaties and nominations to be referred when received; and
- permitting Senators to introduce bills and resolutions by taking them to the desk.

Article I, Section 2 of the Constitution provides for a system of staggered six-year terms for Senators, one-third of their terms expiring at the conclusion of each Congress. The Senate has interpreted the constitutional arrangement to mean that it is a continuing body and does not have to organize itself with each new Congress, as does the House of Representatives. One consequence, among others, of this interpretation is that the Senate does not adopt or re-adopt its rules when a new Congress convenes, this interpretation meaning that the rules continue in effect from one Congress to the next.¹⁹

The Democratic and Republican leaders might address the Senate, possibly describing highlights of the legislative schedule ahead or discussing other pertinent issues.²⁰ Sometimes on the first day, the Senate might also adopt a resolution providing for a January adjournment or for the joint session at which Congress will receive the President's State of the Union address.²¹ The Senate

(...continued)

2011, p. S14.

¹⁹ The modern history of this attribute of the Senate is traced in Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington, DC: GPO, 1992), pp. 1220-1224. An assertion to the contrary has been that the Senate may amend its rules by majority vote when the Senate of a new Congress convenes. See, for example, Senator Tom Udall, "Amending Senate Rules," *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S33-S36. Debate over amending Senate rules at the beginning of the 112th Congress occurred over four days: January 5, 25, 26, and 27, 2011. See the *Congressional Record* for those days.

²⁰ For the opening-day remarks of the leaders of the 112th Congress, see Senator Harry Reid, "Senate Procedure," *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S15-S16; and Sen. Mitch McConnell, "Opening of the 112th Congress," pp. S16-S18.

²¹ See, for example, S.Con.Res. 1 (112th Cong.), agreed to in the Senate January 5, 2011.

might also by unanimous consent set an initial date other than the convening day on which bills and joint resolutions may be introduced.²²

Other first-day activities might occur as a consequence of specific circumstances. For example, following a presidential election, the Senate must adopt a resolution to meet in joint session with the House to count the electoral votes for the President and Vice President,²³ continue the Joint Congressional Committee on Inaugural Ceremonies, and permit use of the Capitol for inaugural activities.²⁴ On the first day of the 106th Congress, there were several announcements and a discussion related to the pending impeachment trial of President Bill Clinton.²⁵

In the 112th Congress, one of the first matters the Senate took up after Senators were sworn was a resolution (S.Res. 4) honoring Senator Barbara Mikulski “for becoming the longest-serving female Senator in history.”²⁶ The Senate also agreed to S.Con.Res. 2, allowing the Capitol Rotunda to be used for a commemorative ceremony marking the 50th anniversary of the inaugural address of President John F. Kennedy.²⁷ Finally, Majority Leader Harry Reid and Minority Leader Mitch McConnell agreed that the Senate should establish a working group under the chair and ranking minority member of the Senate Rules Committee to streamline the confirmation process for nominees to lower-level executive branch positions.²⁸

After the Senate has completed these organizational proceedings, it may turn to other activities it has agreed to undertake, such as the introduction and reference of legislation, speeches, and appointments. In addition, following the sine die adjournment of the preceding Congress through the convening of the new Congress, the secretary of the Senate will have received, in the Senate’s behalf, messages from the House of Representatives, the President, and executive departments.²⁹ The Senate will also receive new messages, such as from the House on its convening and election of the Speaker and its officers. On the first day of a new Congress, messages will be disposed of, typically by reference to the relevant committee.

²² See, for example, Senator Harry Reid, “First Day for Introduction of Bills and Joint Resolutions,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, p. S15.

²³ See, for example, S.Con.Res. 1 (111th Cong.). See “Setting the Date of January 8, 2009, for the Counting of Electoral Votes,” *Congressional Record*, daily edition, vol. 155, January 6, 2009, pp. S5-S6.

²⁴ See, for example, S.Con.Res. 2 (111th Cong.). See “Extending the Life of the Joint Congressional Committee on Inaugural Ceremonies,” *Congressional Record*, daily edition, vol. 155, January 6, 2009, p. S6.

²⁵ Senator Trent Lott, “The Public’s Access to the Impeachment Proceedings,” “Unanimous-Consent Agreement—Senate Access,” and “Senate Agenda,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), pp. 8-11.

²⁶ “Honoring Senator Mikulski as She Becomes the Longest Serving Female Senator,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S6-S13 and S18-S19.

²⁷ “Senate Concurrent Resolution 2—Authorizing the Use of the Rotunda of the Capitol for an Event Marking the 50th Anniversary of the Inaugural Address of President John F. Kennedy,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S67-S68.

²⁸ “Working Group—Lower Level Executive Nominations,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, pp. S14-S15.

²⁹ For example, the President is required by law (2 U.S.C. § 2a(a)) to inform the Senate and House of Representatives of the apportionment of seats in the House following the decennial census. Upon the convening of the 112th Congress, this message was received from the President and referred to the Committee on Homeland Security and Governmental Affairs. “Report of the Apportionment Population for Each State as of April 1, 2010, and the Number of Representatives to Which Each State Would Be Entitled—PM 1,” *Congressional Record*, daily edition, vol. 157, January 5, 2011, p. S61.

Committee Organization

Negotiation between the parties of committee sizes and ratios and parties' separate committee assignment processes begin prior to the convening of a new Congress, and mostly within the party groups—the Democratic and Republican Conferences.³⁰ The only action visible on the chamber floor is the subsequent adoption of resolutions assigning Senators from each party to committees agreed upon by the respective party conference. The adoption of both parties' resolutions is routine.³¹

Committee assignment resolutions are not normally considered on the opening day of a new Congress, but later in January. On the opening day of the 107th Congress, an assignment resolution was taken up to designate committee chairs, pending an agreement on the organization of the Senate under the special circumstance of 50 Democratic and 50 Republican Senators.³²

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³⁰ For information on organizational meetings held prior to the formal start of a new Congress, see CRS Report RS21339, *Congress's Early Organization Meetings*, by Judy Schneider.

³¹ See CRS Report RL30743, *Committee Assignment Process in the U.S. Senate: Democratic and Republican Party Procedures*, by Judy Schneider; and CRS Report 98-183, *Senate Committees: Categories and Rules for Committee Assignments*, by Judy Schneider.

³² Sen. Tom Daschle, "Senate Resolution 7—Designating the Chairmen of the Following Senate Committees," *Congressional Record*, vol. 147, part 1 (January 3, 2001), pp. 14-15.