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

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Summary

The Constitution mandates that Congress convene at noon on January 3 unless the preceding Congress by law designated a different day. P.L. 113-201 set January 6, 2015, as the convening date of the 114th Congress. The 115th Congress and 116th Congress both convened on January 3. Congressional leaders announced that the 117th Congress will convene January 3, 2021.

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

- swearing in Senators elected or reelected in the most recent general election (approximately one-third of the Senate) or newly appointed to the convening Senate,
- establishing the presence of a quorum,
- adopting administrative resolutions,
- adopting standing orders for the new Congress,
- agreeing by unanimous consent to a 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 a change in party control.

The majority and minority leaders usually make welcoming remarks during the day's proceedings. If an election to a Senate seat is undecided or subject to consideration by the Senate, the majority leader and other Senators might address the Senate's posture on that election.

Other first-day activities may 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.

Following their official swearing-in on the Senate floor, newly sworn Senators gather with their families in the Old Senate Chamber for ceremonial swearing-ins with the Vice President or another official of their choosing. The ceremonial swearing-ins may be photographed and recorded.

Negotiations between parties over committee sizes and ratios, parties' action on committee assignments, and parties' decisions on party leadership changes and organization may 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 party leadership changes.

For an explanation of proceedings occurring on the first day in the House of Representatives, see CRS Report RL30725, *The First Day of a New Congress: A Guide to Proceedings on the House Floor*, by Christopher M. Davis.

Contents

The Senate Convenes	1
Oath of Office and Quorum.....	1
Notification to the President and the House	3
Election of the President Pro Tempore	3
Party Leadership.....	3
Election of Officers	3
Daily Meeting Time of the Senate.....	4
Other First-Day Floor Activities.....	4
Standing Orders for the Current Congress	4
Senate Rules.....	5
Special Circumstances	5
Legislative Agenda.....	6
Other Administrative Matters.....	6
Committee Organization	6

Contacts

Author Information.....	7
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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 by law designated a different day for the new Congress's convening.¹ Although January 3, 2021, falls on a Sunday, leaders in both chambers have announced that they expect to convene the 117th Congress on that day.² The previous two Congresses also convened on January 3, obviating the need for a law to set an alternative date. Over the past 25 years, however, it has been the exception rather than the rule for a new Congress to begin on January 3. Nine of the past 13 Congresses began on a date other 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);
- 111th Congress (January 6, 2009);
- 112th Congress (January 5, 2011); and
- 114th Congress (January 6, 2015).

The 107th, 113th, 115th, and 116th Congresses were the only four of these 13 to begin on January 3 (2001, 2013, 2017, and 2019, respectively).

The Vice President, named by the Constitution as President of the Senate, presides when the Senate first convenes. The Senate chaplain offers a prayer and the Vice President leads the Senate in the Pledge of Allegiance.³ The Vice President then announces the receipt of the certificates and credentials of election of Senators who were newly elected or reelected in the most recent general election and the certificates of appointment for Senators newly appointed to fill a vacancy. The reading of these documents is waived by unanimous consent, and they are printed in full in the *Congressional Record*.⁴

Oath of Office and Quorum

The first order of business in a new Senate is the swearing-in of Senators elected or reelected in the most recent general election and of newly appointed Senators. On occasion in recent years, the majority leader or the majority and minority leaders might first be recognized for brief

¹ Congress last convened on a date other than January 3 in the 114th Congress; see P.L. 113-201, which had been enacted to set an alternative date.

² See the 2021 "U.S. House Vote Schedule," <https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/2021CALENDAR.pdf>.

³ 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.

⁴ See The Vice President, "Certificates of Election," *Congressional Record*, daily edition, vol. 165 (January 3, 2019), pp. S1-S4. Senators appointed since the most recent election may also be sworn in when the Senate convenes.

remarks.⁵ 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.⁶

After the Vice President lays the certificates of election⁷ and appointment before the Senate and states that their reading will be waived if there is no objection, he or she calls those Senators to the front of the chamber, generally in alphabetical order in groups of four, to take the oath and to also “subscribe to the oath” in the official oath book.⁸ 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.⁹

An oath is mandated by Article VI of the Constitution. Its text is set by statute (5 U.S.C. §3331).¹⁰

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.

When Senators take the oath, they raise their right hand to swear or affirm, repeating after the Vice President. Many Senators hold a family Bible or another item,¹¹ and some hold nothing. There is no requirement that a Bible or anything else be used when the oath is taken.¹²

After the Senators have been sworn in in the Senate chamber, 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, fulfilling the constitutional requirement that a quorum be present to conduct business.¹³

⁵ See, for example, Sens. Tom Daschle and Trent Lott, “A Historic Day,” *Congressional Record*, vol. 147, part 1 (January 3, 2001), pp. 1-2.

⁶ See, for example, Sen. Trent Lott, “Louisiana Election Contest,” *Congressional Record*, vol. 143, part 1 (January 7, 1997), p. 5. As Majority Leader Lott explained, Sen.-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 Sen. Norm Coleman, which was under consideration by the Minnesota state courts. A Senator from Minnesota was not seated pending completion of court and state electoral authority proceedings. Sen. Harry Reid, “Welcoming the 111th Congress,” *Congressional Record*, vol. 155, part 1 (January 6, 2009), p. 45; and Sen. Mitch McConnell, “Minnesota Senate Race,” *Congressional Record*, vol. 155, part 1 (January 6, 2009), p. 49.

⁷ Forms of certificates of election and of appointment of Senators appear in Senate Rule II.

⁸ The historic oath book contains the signatures of all U.S. Senators dating from the period after the Civil War. A Senator signs this book each time he or she takes the oath of office. Each Senator is allowed to keep the pen he or she uses to sign the oath book. See U.S. Senate, “Taking the Oath,” http://www.senate.gov/artandhistory/history/common/briefing/Oath_Office.htm#3.

⁹ 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, <http://www.senate.gov/reference/resources/pdf/Traditions.pdf>.

¹⁰ The President’s oath is set forth in the Constitution (art. II, §1, cl. 7).

¹¹ Baker, *Traditions*, pp. 3-4.

¹² After the formal swearing in of Senators in the Senate chamber, a ceremonial swearing-in may subsequently take place in the Old Senate Chamber. The Vice President (or another individual of a Senator’s choosing) and individual Senators re-enact the swearing-ins 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. Individuals might also record a ceremonial swearing-in.

¹³ Under the Constitution (art. I, §5, cl. 1), a quorum in each house is required to conduct business. For an explanation of quorum requirements in the Senate, see CRS Report 98-775, *Quorum Requirements in the Senate: Committee and*

Notification to the President and the House

The majority leader offers simple resolutions that the President (S.Res. 1, 116th Congress) and the House (S.Res. 2, 116th 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.¹⁴

Election of the President Pro Tempore

As provided by the Constitution, the President pro tempore is chosen by the Senate to serve as the presiding officer during the absence of the Vice President.¹⁵ Referred to as the President pro tem, this Senator has customarily been the majority party Senator with the longest continuous service.¹⁶

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 simple resolution and then proceeds to the front of the chamber to be sworn in by the Vice President. Afterwards, the Senate adopts simple resolutions to notify the House and the President of the election of the President pro tempore.¹⁷

Party Leadership

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. No floor votes are needed to ratify these changes.¹⁸

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 secretaries¹⁹—do not need to be reelected on the opening day of a new Congress.²⁰ However, when there is a change in party

Chamber, coordinated by Elizabeth Rybicki. A Senator might be absent on opening day due to illness, family needs, or another reason.

¹⁴ See “Informing the President of the United States That a Quorum of Each House Is Assembled,” *Congressional Record*, daily edition, vol. 165 (January 3, 2019), p. S5.

¹⁵ 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.

¹⁶ The President pro tempore holds the office during his or her Senate term and is not reelected at the beginning of a new Congress. For more information, see CRS Report RL30960, *The President Pro Tempore of the Senate: History and Authority of the Office*, by Christopher M. Davis.

¹⁷ In the 116th Congress, a new President pro tempore was elected due to a vacancy. See S.Res. 3 (116th Congress). For notifications to the President and the House, see S.Res. 4, and S.Res. 5 (116th Congress).

¹⁸ See CRS Report RL30567, *Party Leaders in the United States Congress, 1789-2019*, by Valerie Heitshusen.

¹⁹ Party secretaries are approved by their party conferences and then elected by the Senate.

²⁰ See CRS Report 98-747, *Secretary of the Senate: Legislative and Administrative Duties*, by Jacob R. Straus; CRS Report 98-748, *Sergeant at Arms and Doorkeeper of the Senate: Legislative and Administrative Duties*, by Jacob R. Straus; and CRS Report R41807, *House and Senate Chaplains: An Overview*, by Ida A. Brudnick. See also CRS Report RS20544, *The Office of the Parliamentarian in the House and Senate*, by Valerie Heitshusen; and CRS Report

control or a vacancy at the beginning of a Congress, any new officers are approved by the full Senate.²¹

In addition, since the Senate's legal counsel and deputy legal counsel are typically appointed by the President pro tempore for the duration of only two Congresses, they are appointed or reappointed every four years, and simple resolutions are adopted effecting the appointments.²²

Daily Meeting Time of the Senate

The Senate establishes its daily hour of meeting by a simple resolution, which must be renewed each Congress. This resolution is usually offered by the majority leader.²³

Other First-Day Floor Activities

Standing Orders for the Current Congress

Other organizational business is taken up on the Senate floor on the first day. At the beginning of the 116th Congress, as in preceding Congresses, the Senate adopted en bloc by unanimous consent 11 standing orders for the duration of the current Congress.²⁴ These standing orders addressed

- meetings of the Select Committee on Ethics;
- limiting roll call votes to 15 minutes;
- authorizing Senators to present reports at the desk;
- allowing 10 additional minutes daily to speak for each party leader ("leader time");
- forgoing the 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;

RS22891, *Office of Senate Legal Counsel*, by Matthew E. Glassman. Some information on party secretaries may be found at U.S. Senate, "Party Secretaries," http://www.senate.gov/artandhistory/history/common/briefing/party_secretaries.htm.

²¹ For example, when party control of the Senate switched with its convening in 2015, the Senate elected a new Secretary and Sergeant at Arms and also elected the majority and minority secretaries (as their roles had changed). The Senate also adopted simple resolutions to notify the President and the House of the election of the Secretary and Sergeant at Arms. See "Electing Julie Adams as the Secretary of the Senate," et seq., *Congressional Record*, daily edition, vol. 161 (January 6, 2015), pp. S7-S8. See also S.Res. 8, S.Res. 14, and S.Res. 15 (114th Cong.); and the Senate website at http://www.senate.gov/pagelayout/reference/e_one_section_no_teasers/org_chart.htm.

²² The Senate legal counsel (S.Res. 7) and deputy legal counsel (S.Res. 8) were appointed to four-year terms on the opening day of the 116th Congress: "To Make Effective Appointment of Senate Legal Counsel," and "To Make Effective Appointment of Deputy Senate Legal Counsel," *Congressional Record*, daily edition, vol. 165 (January 3, 2019), p. S6.

²³ See S.Res. 6 (116th Congress), agreed to in the Senate January 3, 2019.

²⁴ Sen. Mitch McConnell, "Unanimous Consent Agreements," *Congressional Record*, daily edition, vol. 163 (January 3, 2017), p. S7.

- during an adjournment or recess of the Senate, authorizing the Secretary of the Senate to receive presidential messages and House messages (except for House legislation) 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.

Senate Rules

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, since a quorum is always sworn, and that it therefore does not have to organize itself with each new Congress, as does the House of Representatives.²⁵ One consequence, among others, of this interpretation is that the Senate does not adopt or re-adopt its rules when a new Congress convenes, the interpretation meaning that the rules continue in effect from one Congress to the next.²⁶

Special Circumstances

Other first-day activities might occur as a consequence of specific circumstances.²⁷ For example, following a presidential election, the Senate must adopt a concurrent resolution to meet in joint session with the House to count the electoral votes for the President and Vice President,²⁸ continue the Joint Congressional Committee on Inaugural Ceremonies, and permit use of the Capitol for inaugural activities.²⁹

²⁵ See CRS Report R42929, *Procedures for Considering Changes in Senate Rules*, by Richard S. Beth.

²⁶ Senate Rule V, para. 2. 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. See also CRS Report R44395, *Amending Senate Rules at the Start of a New Congress, 1953-1975: An Analysis with an Afterword to 2015*, by Walter J. Oleszek; and CRS Report R42928, *"First Day" Proceedings and Procedural Change in the Senate*, by Valerie Heitshusen.

²⁷ 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. See Sen. 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.

²⁸ See S.Con.Res. 2 (115th Cong.), agreed to in the Senate January 3, 2017; and "Providing for the Counting of the Electoral Votes for President and Vice President of the United States," *Congressional Record*, daily edition, vol. 163 (January 3, 2017), pp. S6-S7. See also CRS Report RL32717, *Counting Electoral Votes: An Overview of Procedures at the Joint Session, Including Objections by Members of Congress*, coordinated by Elizabeth Rybicki and L. Paige Whitaker.

²⁹ See S.Con.Res. 1 (115th Cong.), agreed to in the Senate January 3, 2017; and "Extending the Life of the Joint Congressional Committee on Inaugural Ceremonies," *Congressional Record*, daily edition, vol. 163 (January 3, 2017), p. S6. The 116th Congress agreed on May 6, 2019, to create the Joint Congressional Committee on Inaugural Ceremonies to make arrangements for the inauguration (S.Con.Res. 38). Extension of the committee's life would be expected at the convening of the 117th Congress.

Legislative Agenda

The Republican and Democratic leaders might address the Senate, possibly describing highlights of the legislative schedule ahead or discussing other pertinent issues.³⁰ Other Senators might be recognized to speak after the Senate has completed its proceedings involving the oath of office and the consideration of resolutions and unanimous consent requests.

Sometimes on the first day, the Senate might also adopt a concurrent resolution providing for a January adjournment or for the joint session at which Congress will receive the President's State of the Union address.³¹

Other Administrative Matters

After the Senate has completed its organizational proceedings, it may turn to other activities it has agreed to undertake, such as the introduction and reference of legislation, speeches, and appointments.³² 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, on the Senate's behalf, messages from the House of Representatives,³³ the President, and executive departments and agencies.³⁴ The Senate also receives new messages, such as from the House on its convening and election of the Speaker and its officers.³⁵ On the first day of a new Congress, messages will be disposed of, typically by reference to the relevant committee.³⁶

Committee Organization

Negotiations between parties over committee sizes and ratios and separate committee assignment processes begin prior to the convening of a new Congress and mostly within the party groups—the Democratic and Republican Conferences.³⁷ The only action taken on the chamber floor is the

³⁰ For the opening-day remarks of the leaders of the 116th Congress, see Sen. Mitch McConnell, “The New Congress,” *Congressional Record*, daily edition, vol. 165 (January 3, 2017), pp. S7-S8; and Sen. Charles Schumer, “Welcoming Members of the Senate,” pp. S8-S9.

³¹ See S.Con.Res. 3 (113th Cong.), agreed to in the Senate on January 3, 2013.

³² See CRS Report 96-548, *The Legislative Process on the Senate Floor: An Introduction*, by Valerie Heitschusen. See also CRS Report R46603, *Bills, Resolutions, Nominations, and Treaties: Characteristics and Examples of Use*, by Jane A. Hudiburg.

³³ See “Messages from the House Received during Adjournment, 114th Congress,” *Congressional Record*, daily edition, vol. 163 (January 3, 2015), pp. S18-S20.

³⁴ See “Executive and Other Communications,” *Congressional Record*, daily edition, vol. 159 (January 3, 2013), p. 13. 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*, vol. 157, part 1 (January 5, 2011), pp. 64-65.

³⁵ See “Message from the House,” *Congressional Record*, daily edition, vol. 165 (January 3, 2019), S18.

³⁶ Certain administrative notices might also appear in the opening-day *Congressional Record*. See, for example, “Reports of Committees during Adjournment,” *Congressional Record*, daily edition, vol. 163 (January 3, 2017), pp. S20-S21; Sen. Bob Corker, “Arms Sales Notification,” *Congressional Record*, daily edition, vol. 163 (January 3, 2017), pp. S14-S18; and “Notice: Registration of Mass Mailings,” *Congressional Record*, vol. 157, part 1 (January 5, 2011), p. 71. Certain records might also appear in the opening-day *Congressional Record*. See “Foreign Travel Financial Reports,” *Congressional Record*, vol. 151, part 1 (January 4, 2005), p. 31.

³⁷ See CRS Report RL34752, *Senate Committee Party Ratios: 98th-116th Congresses*.

subsequent adoption of simple resolutions assigning Senators from each party to committees agreed upon by the respective party conference. The adoption of both parties' resolutions is routine.³⁸

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, the Senate took up and agreed to an assignment resolution (S.Res. 7) to designate committee chairs pending an agreement on the organization of the Senate under the special circumstance of 50 Democratic and 50 Republican Senators.³⁹ Committee funding resolutions are also considered later in February or early March.⁴⁰

In years in which a new President will be inaugurated, Senate committees begin hearings on designated Cabinet secretaries pending the formal submission of nominations once the President-elect has been inaugurated.⁴¹

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³⁸ See CRS Report RL30743, *Committee Assignment Process in the U.S. Senate: Democratic and Republican Party Procedures*, by Judy Schneider.

³⁹ Sen. Tom Daschle, "Senate Resolution 7—Designating the Chairmen of the Following Senate Committees," *Congressional Record*, daily edition, vol. 147, part 1 (January 3, 2001), pp. 14-15. Committee assignments were made on the opening day of the 104th Congress, however. See "A Resolution Making Majority Party Appointments to Certain Senate Committees for the 104th Congress," and "To Make Minority Appointments to Senate Committees under Paragraph 2 of Rule XXV for the One Hundred and Fourth Congress," *Congressional Record*, vol. 141, part 1 (January 5, 1995), p. 8.

⁴⁰ See CRS Report R43160, *Senate Committee Funding: Description of Process and Analysis of Disbursements*, by William T. Egar; and CRS Report R40424, *Senate Committee Funding Requests and Authorizations, 106th-116th Congresses*, by William T. Egar.

⁴¹ See, for example, the number of Senate committee hearings scheduled on President Trump's Cabinet nominations two weeks prior to the presidential inauguration. "Congressional Program Ahead," *Congressional Record*, daily edition, vol. 163 (January 6, 2017), p. D21. See CRS congressional distribution memorandum, *Nominations to Cabinet Positions at the Outset of a New Administration, 1976-2017*, by Michael Greene, Henry B. Hogue, and Elizabeth Rybicki (available to congressional clients upon request).

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