

Multi-Party Coalition Governance in Congress

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Abstract: *The adoption of majoritarian methods of elections in American jurisdictions, such as ranked-choice voting and proportional representation, could theoretically enable third-party candidates to succeed in federal elections, including congressional elections. Constitutionally, Congress is required to handle multi-party governance if the electorate sends third parties to it. But mechanically, Congress has constructed itself in conformance with two-party rule. This Note describes how Congress's existing governance system—the institution's sets of rules, framework statutes, parliamentary precedents, and norms—does permit multi-party governance, although it shapes the form it would take. It establishes a typology of three forms of power-sharing arrangements in Congress, based on historical precedent: a “shell majority” composed of minor parties; a rotation of an officer position among parties; and a “nominal party” coalition. This Note explains that in both chambers, existing rules and precedent force a multi-party coalition to cohere into a single “shell majority” faction, and they also allow that coalition to rotate officer roles among its constituent parties within a single session. Next, this Note describes and proposes solutions to novel problems that a multi-partisan Congress would face. Potential delays associated with tabulating ranked-choice ballots could require delayed or contingent internal party leadership elections. Alternatives to the Speaker of the House election would mitigate the risk that delays in coalition negotiation could incapacitate the House.*

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INTRODUCTION

The United States has almost always operated its federal government within a two-party framework, despite George Washington’s famous advice to the contrary.¹ Recently, however, more and more American jurisdictions have begun to adopt majoritarian methods of election such as proportional representation (“PR”) and ranked-choice voting (“RCV”)—methods which

¹ See George Washington, Farewell Address (Sept. 17, 1796), in 1 A Compilation of the Messages and Papers of the Presidents 205, 209–11 (James D. Richardson ed., 1897).

empower third-party candidates in state and federal elections by mitigating the risk that they will “spoil” a two-candidate race.²

RCV is designed to solve the “spoiler effect” of third-party candidacies by mitigating the problem of “vote-splitting,” where a candidate opposed by a majority of the electorate can still win with a plurality because the majority split its votes across multiple opposition candidates.³ The freedom to run without the risk of spoiling the race gives third parties an opportunity to elevate their own candidates and issues and participate in electoral coalition-building.⁴ But RCV also gives them a legitimate chance to win seats.⁵ PR mitigates the “spoiler effect” by having multi-member rather than single-member districts. Because there are multiple seats up for grabs, the winner does not take all: a minority of support can translate to a minority of seats, rather than zero seats.⁶ Depending on the format of PR election chosen, it may be even more likely than RCV to translate into third-party success.⁷

What would happen if those third-party federal candidates were actually elected? Could Congress, long enmeshed in duopoly, continue to function if third parties meaningfully joined its ranks?

On one level, the answer is obvious: the Constitution does not contemplate political parties, much less require a two-party legislative system. Plus, the First Amendment guarantees freedom for third parties and unaffiliated candidates to seek and obtain representation in Congress.⁸ Constitutionally speaking, Congress is required to handle multi-party

² See, e.g., Drew DeSilver et al., *More U.S. Locations Experimenting with Alternative Voting Systems*, Pew Rsch. Ctr. (June 29, 2021), <https://www.pewresearch.org/short-reads/2021/06/29/more-u-s-locations-experimenting-with-alternative-voting-systems/>.

³ See, e.g., Deb Otis et al., *FairVote’s Position on Fusion Voting*, FairVote (Apr. 17, 2025), <https://fairvote.org/report/fairvotes-position-on-fusion-voting/>.

⁴ See *id.*

⁵ But see Lee Drutman & Maresa Strano, *What We Know About Ranked-Choice Voting* 45–52 (2021), <https://www.newamerica.org/political-reform/reports/what-we-know-about-ranked-choice-voting/candidates-and-campaigns/> (questioning the likelihood that third parties can attain enough support to dislodge well-established and moneyed opponents from the incumbent Republican and Democratic parties).

⁶ See, e.g., Grant Tudor & Beau Tremiere, *Proportional representation for the United States*, Protect Democracy (Sept. 12, 2023), <https://protectdemocracy.org/work/proportional-representation-for-the-united-states/>.

⁷ See also *Proportional Representation Voting Systems*, FairVote, <https://fairvote.org/archives/proportional-representation-voting-systems/> (last visited May 14, 2025) (noting that an “Open Party List Ballot” system of PR “reduces the creation of manufactured majorities and the opportunity for gerrymandering”).

⁸ See, e.g., *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986) (“Restrictions upon the access of political parties to the ballot impinge upon the rights of individuals to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively.”); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (“The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes.”).

governance if the electorate sends third parties to it. But how, mechanically, could it do so? The ceilings and floors set by the Constitution are not the only provisions of law that govern Congress. Other sources of “law within Congress” include cameral rules, framework statutes, parliamentary precedent, internal party rules, and informal norms.⁹

Over two centuries, Congress has used those rules and laws to construct itself—and other institutions closely tied to it, like independent commissions¹⁰—in conformance with two-party rule. Political scientists and historians note that institutional features of the modern Congress include the majority’s “organizational cartel,” where patronage and shared electoral incentives motivate the allocation of leadership and committee positions, and its “procedural cartel,” where its senior members control nearly all agenda-setting power in the chamber.¹¹ These cartels are created and enforced through rules and norms. Indeed, the written rules and parliamentary precedents of the House and Senate, the internal rules of the party organizations, and statutes all emerge from and reinforce a two-party system.¹²

This Note concludes that most laws, rules, and precedents could serve a coalition of third parties without needing amendment, so long as those parties (1) together constituted a majority and (2) could settle on a singular or rotating appointment for the position of floor leader in each chamber. Some changes to party rules could mitigate minor challenges between the November of an election year and the beginning of a new Congress in January. One other particularly salubrious change would be to no longer

⁹ Jonathan S. Gould, *Law Within Congress*, 129 *Yale L.J.* 1946, 2028 (2020); see Walter J. Oleszek et al., *Congressional Procedures and the Policy Process* 6–7 (11th ed. 2020); Gould, *supra*, at 1950, 1959–67.

¹⁰ See, e.g., 5 S. Comm. on Gov’t Affs., *Study On Federal Regulation: Regulatory Organization*, S. Doc. No. 91, 95th Cong., 1st Sess. 31 (1977) (quoting Senator Hart during a 1973 debate: “The commissions, if I may risk oversimplification, are ours.”); Robert E. Cushman, *The Independent Regulatory Commissions* 74 (1941) (first describing independent agencies as “arm[s] of Congress”). The status of independent agencies is currently being challenged at the Supreme Court. See, e.g., *Trump v. Slaughter*, No. 25-332 (argued Dec. 8, 2025); *Trump v. Cook*, No. 25A312 (argued Jan. 21, 2026).

¹¹ Jeffery A. Jenkins & Charles Stewart III, *Fighting for the Speakership: The House and the Rise of Party Government* 2–3, 144–50, 271–73 (2012); *id.* at xiii (describing an evolution “over the past two centuries from an ad hoc proceeding devoid of partisan structure to a ritualized proceeding that seals near-monopoly control over the tools of lawmaking by the majority party”); Gary W. Cox & Mathew D. McCubbins, *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives* 17–34 (2005). Similar principles of centralized leadership power apply to the Senate as well. See, e.g., Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* 159–80 (2021).

¹² See *infra* Part III.

require the election of a Speaker of the House before the swearing-in of that chamber's representatives.¹³

The exact methods by which states might send third-party candidates to Congress may vary, and the only important issue for the purposes of this Note is that the Constitution permits states to adopt at least one third party-enhancing method of election, such as RCV or PR, for federal offices.¹⁴ PR requires multi-member districts to function, which Congress currently prohibits by statute for the election of its members, while states may adopt RCV under current federal law.¹⁵ Because RCV is currently the most feasible alternative majoritarian method of election—and the most prominent, with the greatest rate of adoption and proposed adoption among states—this Note pays particular attention to RCV.¹⁶ But this Note's conclusions are applicable to any method that enables third parties to realistically compete for substantial representation in Congress.

This Note proceeds in six steps. First, it describes why and how a multi-party Congress might arise. Second, it explains that not only could Congress theoretically support a coalition government, but it has also done so before. This Note uses history to establish a new typology of three forms of

¹³ See *infra* Section V.B.

¹⁴ See *Dudum v. Arntz*, 640 F.3d 1098, 1117 (9th Cir. 2011) (rejecting a challenge to RCV under the First Amendment, the Due Process Clause, and the Equal Protection Clause because the “minimal at best” burden on voters’ constitutional rights was outweighed by San Francisco’s interests in its RCV system); *Baber v. Dunlap*, 376 F. Supp. 3d 125, 134–38 (D. Me. 2018), *appeal dismissed*, No. 18-2250, 2018 WL 8583796 (1st Cir. Dec. 28, 2018) (holding that RCV did not violate Maine’s authority to prescribe the time, place, and manner of elections to federal office under Article I of the Constitution); *Hagopian v. Dunlap*, 480 F. Supp. 3d 288, 298–300 (D. Me. 2020) (finding constitutional challenges to Maine’s RCV system “not likely to succeed on the merits” in the context of a U.S. Senate election); see also *Smiley v. Holm*, 285 U.S. 355, 367-68 (1932) (interpreting the Elections Clause to provide significant deference to states absent “overruling action by Congress”); *Brooks v. Miller*, 158 F.3d 1230, 1235–36 (11th Cir. 1998) (reviewing Georgia’s majoritarian runoff system for discriminatory effects or motivations under the Voting Rights Act and Equal Protection clause without questioning the basis of state’s authority to enact a majoritarian runoff in the first instance). This Note does not look to two-stage runoffs, such as Georgia’s traditional runoff and California’s jungle primary system, in its analysis; even though they may be majoritarian in structure, they are not third party-enhancing in practice.

¹⁵ Uniform Congressional District Act, 2 U.S.C. § 2c; see *Tudor & Tremiere*, *supra* note 6; Proportional Representation Voting Systems, *supra* note 7; Ranked Choice Voting Information, FairVote, <https://fairvote.org/our-reforms/ranked-choice-voting-information/> (last visited Feb. 22, 2026). Of course, multi-member PR would also be incompatible with the constitutional structure of the Senate, where each state elects one senator at a time. And it is also worth noting that single-member RCV districts are still an unlikely venue for significant third-party success.

¹⁶ See, e.g., U.S. Election Assistance Comm’n, *Alternative Voting Methods in the United States* 7–9 (2023), https://www.eac.gov/sites/default/files/electionofficials/Final_Alternative_Voting_Methods_in_the_United_States_508.pdf. As this Note was going to press, the U.S. Supreme Court released its opinion in *Louisiana v. Callais*, No. 24-109 (Apr. 29, 2026), the consequences of which have resulted in an increasingly serious discussion about adopting PR for congressional elections. See, e.g., Matt Ford, *The Best Way to Fix the Supreme Court’s Attack on Voting Rights*, *The New Republic* (May 1, 2026), <https://newrepublic.com/article/209825/supreme-court-callais-proportional-representation>.

congressional coalition power-sharing—a “shell majority faction,” an “officer rotation,” and a “nominal party coalition.” The Thirty-Fourth Congress, in 1855–1857, featured a House of Representatives run by a loosely cohered “anti-Nebraska” coalition and the election of a third-party Speaker of the House. A Senate power-sharing arrangement during the Sixty-Second Congress, in 1911–1912, featured the rotation of leadership offices across Republicans and a Democrat. The informal “conservative coalition”-based system of the mid-twentieth century operated as another form of cross-party power alignment. Each of these three vignettes exemplifies a category of coalitional power-sharing that future congressional coalitions might draw upon.

Third, this Note explains that although most features of the twenty-first-century Congress would survive a transition to a multi-party environment with little to no issue, success would require a multi-party coalition to form a “shell majority faction” in order to take advantage of existing cameral rules and precedents. Fourth, it points out a set of statutes—mostly having to do with the organization of Congress in Title 2 of the U.S. Code—that specifically name Republican and Democratic party members to positions, in an arrangement that ought to be updated. It also addresses a different set of statutes regarding appointments to independent commissions that would present novel questions. Fifth, it lays out novel operational problems that such a Congress would face, including delays in RCV vote tabulation and the lack of caretaker governance in the House before the election of a speaker, and proposes solutions to them. Finally, it describes the ways a multipolar Congress could interact with the president. While there are potential opportunities for a president to disrupt a legislative coalition and potentially weaken the institution, this Note argues that such concerns could be overblown in a multi-party presidential system, especially in light of the present weakness of the legislative branch relative to the executive. It concludes by reaffirming that Congress is institutionally able to bear multi-party governance, should it ever be required to.

I. A PRIMER ON CONGRESSIONAL GOVERNANCE

This Note’s analysis will encompass constitutional provisions, congressional cameral rules, framework statutes, cameral precedents, and party caucus rules. These sources of “law within Congress” are key to

understanding how congressional governance can adapt to third-party representation.¹⁷

First, the Constitution lays out basic guidance regarding how the chambers of Congress will operate and what they may enact. For example, the Vesting Clause empowers Congress only to pass laws within the scope of the “legislative Powers herein granted.”¹⁸ Other clauses require that the House choose a Speaker and that the Senate choose a president *pro tempore* in the absence of the Vice President, another clause requires a majority quorum for either house to conduct business, and still other clauses require supermajority margins for certain actions.¹⁹ The Constitution also grants each chamber the power to “determine the Rules of its Proceedings.”²⁰

Each chamber has adopted written rules to govern its operation. The House passes a privileged resolution containing the newest version of its rules on the first day of every Congress, after the election of a Speaker and the other officers of the House (the Clerk, the Sergeant-at-Arms, and the Chief Administrative Officer).²¹ There are twenty-eight House Rules that govern the House Chamber, its operation as the Committee of the Whole, the operation and prerogatives of its committees, and the privileges of its members.²² The House Rules Committee superintends the rules and also sends to the floor weekly “special rules” that govern the chamber’s consideration of most major legislation; without this mechanism, the House’s default rule is to consider bills in the order in which they are listed in the calendar.²³ The Senate, meanwhile, has forty-four rules, but they operate as standing rules and roll over from session to session by default.²⁴ As in the House, the Senate Rules govern the chamber’s floor proceedings, the operation and prerogatives of its committees, and the privileges of its members, but they also govern special proceedings unique to the Senate, such as “executive session,” used for considering nominations and treaties. The Senate Committee on Rules and Administration maintains the Senate Rules, but it lacks the equivalent agenda-setting power wielded by its House counterpart.²⁵ Rather than scheduling business using special rules, as in the

¹⁷ See generally Gould, *supra* note 9 (describing the relevant forms of “law within Congress”).

¹⁸ U.S. Const., art. I, § 1

¹⁹ Id. §§ 2–3, 5, 7.

²⁰ Id. § 5, cl. 2.

²¹ See, e.g., 171 Cong. Rec. H7–8 (daily ed. Jan. 3, 2025).

²² See generally Rules of the House of Representatives, H. Doc. 118-187 (2025) (containing the most up-to-date publication of the House Rules).

²³ See Oleszek et al., *supra* note 9, at 161–63.

²⁴ See generally Standing Rules of the Senate, S. Doc. 113-18 (2013) (containing the most up-to-date publication of the Senate Rules).

²⁵ See Oleszek et al., *supra* note 9, at 246–47.

House, the Senate relies on the majority and minority leaders to structure unanimous consent agreements to govern the consideration of a given legislative item; power is thus centralized in the leaders rather than within a committee, but shared with the minority, rather than belonging to the majority alone.²⁶ Though both chambers enable their members to ask the chamber for unanimous consent to deviate from its rules and take a given action, the use of unanimous consent is generally limited to ministerial functions in the House, whereas the Senate “functions to a large extent by unanimous consent, in effect adjusting or disregarding its rules as it goes along.”²⁷

Generally speaking, the House is more reliant on its written rules than the Senate, but in both chambers the “written rules are merely the tip of an iceberg.”²⁸ Much of congressional procedure “often turns on parliamentary precedents . . . made and applied by nonpartisan quasi-judicial figures in each chamber: the House and Senate parliamentarians.”²⁹ Some precedents resolve ambiguities in written rules or fill gaps in the event of silence in the rules, but others override the rules. For example, in the House, party leaders are afforded the customary “magic minute” privilege of speaking indefinitely on the floor, even if the speaker (or chair, if in the Committee of the Whole) has only recognized them for a period of one minute: this device has been deployed by both parties to briefly filibuster legislation.³⁰ In the Senate, the overriding precedent pertaining to party leaders is even more important. Although the Senate Rules instruct that “the Presiding Officer shall recognize the Senator who shall first address him,” custom and precedent dictate that the party leaders (majority, then minority) will be recognized ahead of all other senators, regardless of who first actually addresses the chair.³¹ This privilege of first recognition comes with significant power: it allows that person to offer unanimous consent agreements first; to motion to adjourn and head off a motion or other maneuver that another senator was planning to offer; to challenge rulings

²⁶ See *id.*

²⁷ *Id.* at 100.

²⁸ Gould, *supra* note 9, at 1950; see also John C. Roberts, *Majority Voting in Congress: Further Notes on the Constitutionality of the Senate Cloture Rule*, 20 *J.L. & Pol.* 505, 511 (2004) (“In the Senate, as I found during my years as a Committee General Counsel, traditions and parliamentary precedents are much more important than written rules.”).

²⁹ Gould, *supra* note 9, at 1950.

³⁰ See 2 Charles W. Johnson III et al., *Precedents of the United States House of Representatives*, § 6.19, H. Doc. 115-62, at 76-79 (2017) [hereinafter *House Precedents*].

³¹ *Standing Rules of the Senate*, R. XIX(1)(a), S. Doc. No. 113-18, at 18 (2013); see Oleszek et al., *supra* note 9, at 281; Gould, *supra* note 9, at 1964; Stanley Bach, *The Nature of Congressional Rules*, 5 *J.L. & Pol.* 725, 733-34 (1989).

with a point of order ahead of anyone else; and to block other senators' amendments to bills by "filling the amendment tree" before they can be recognized to offer their own amendments.³² Other precedents guide the process of referring bills to certain committees, and still other precedents guide floor leaders' unanimous consent agreements in the Senate.³³

Finally, Congress has occasionally passed laws concerning the legislative process. These "framework statutes" are a supplemental source of written law that either affect the whole institution, like the Legislative Reorganization Acts of 1946 and 1970, or create special processes for certain legislative measures, such as budget reconciliation or authorizing the use of military force.³⁴ These "statutized rules" are adopted under the same constitutional authority each chamber has to determine the rules of its proceedings; however, given that the Constitution rests that authority in each chamber separately, it is possible that a chamber could unilaterally amend its rules to ignore a given framework statute.³⁵ For example, the Senate recently undertook a complex parliamentary maneuver to reinterpret the scope of the Congressional Review Act in a way that contradicts the statute's language.³⁶ Moreover, judicial review does not extend to review of a chamber's decisions to adjust the rules of its proceedings,³⁷ so the only possible enforcement could come from the rival chamber, for example in the form of holding out on legislation.

While those sources of law govern the institution as a whole, they are not the only rules that can bind members of Congress. The party caucuses and conferences also have their own rules for their members, and these can affect the operation of the chamber significantly.³⁸ Party rules determine how committee appointments are made and chairmanships are allocated. They determine how the party's leaders, including its floor leader, are elected. For

³² See Oleszek et al., *supra* note 9, at 247–48, 288–303; Christopher M. Davis, Cong. Rsch. Serv., RS22854, *Filling the Amendment Tree in the Senate* 1 (2015).

³³ See Oleszek et al., *supra* note 9, at 110–14, 255.

³⁴ See Gould, *supra* note 9, at 1960–61.

³⁵ See Aaron-Andrew P. Bruhl, *Using Statutes to Set Legislative Rules: Entrenchment, Separation of Powers, and the Rules of Proceedings Clause*, 19 J.L. & Pol. 345, 415 (2004) ("Statutized rules can be either binding or constitutional, but not both.").

³⁶ See David Jordan, *Senate Sidesteps Parliamentarian, Widens Reach of CRA*, Roll Call (May 22, 2025), <https://rollcall.com/2025/05/22/senate-sidesteps-parliamentarian-widens-reach-of-cra/>; Maeve P. Carey & Christopher M. Davis, Cong. Rsch. Serv., R43992, *The Congressional Review Act (CRA): Frequently Asked Questions 8–9* (2021) (quoting Letter from Susan A. Poling, Gen. Counsel, Gov't Accountability Off., to Sen. Harry Reid, Mitch McConnell, Barbara Boxer, & Thomas Carper, May 29, 2014, at 6, 9 (legal opinion finding a proposed rule to not be a "triggering event" for expedited Congressional Review Act review but noting that it is ultimately for "Congress to decide" based on the constitutional authority of Article I, section 5)).

³⁷ See, e.g., *McCarthy v. Pelosi*, 5 F.4th 34, 41 (D.C. Cir. 2021).

³⁸ See Oleszek et al., *supra* note 9, at 7.

example, the House Democratic Caucus has a “unity rule” that binds its members to vote on the floor for a speaker nominee pre-selected by internal party elections, while the House Republican Conference does not similarly bind its members with an equivalent rule.³⁹ Finally, the party rules can require speakers and floor leaders to take certain legislative actions for the benefit of the membership, including limiting the usage of the suspension of the rules procedure and imposing limits on the usage of “closed rules” restricting germane amendments.⁴⁰ However, these rules originate separately from the institutional rules governing Congress; no member of Congress is required to join a political party, and the “majority” and “minority” factions are not required to take the form of a formal political party.⁴¹

A failure of any one party to constitute the majority in a chamber of Congress would trigger novel questions about its parliamentary organization and operation. No chamber of Congress in the modern era has been governed by anything other than a party organization holding an outright majority.⁴² Without a majority, a plurality party would be unable to unilaterally establish or maintain its procedural and organizational cartel powers over the chamber.⁴³ As such, that party and chamber would be faced with unfamiliar issues in terms of organization and procedure. Who would control the floor agenda? Who gets to be named a leader? How would committee assignments and officer appointments be divided up? If governance is by a majority coalition arrangement, what happens if that coalition breaks down partway through a Congress?

The rest of this Note seeks to answer these questions, informed by historical precedent and sources of law within Congress.⁴⁴ It concludes that, in the main, Congress remains equipped for multi-party governance—but only when those parties organize a majority coalition to act as a “shell majority faction” for the purposes of the rules and chamber organization. Even though there are third party-friendly alternative devices in each chamber, like the House discharge petition and the Senate’s reliance on

³⁹ Compare Pete Aguilar & Ted Lieu, Rules of the Democratic Caucus, 119th Cong. 33 (2024) [hereinafter House Democratic Caucus Rules], <https://www.dems.gov/rules-of-the-democratic-caucus> (discussing Rule 34), with Conference Rules of the 119th Cong., House GOP, <https://www.gop.gov/conference-rules-of-the-119th-congress/> (2025) [hereinafter House Republican Conference Rules] (explaining Rules 3 and 4.).

⁴⁰ See Oleszek et al., *supra* note 9, at 28.

⁴¹ See *infra* Part III.

⁴² Counting independent senators who caucus with the Democrats as members of the Democratic majority, and counting vice presidents for the purpose of their tie-breaking vote.

⁴³ See Cox & McCubbins, *supra* note 11, at 24–26.

⁴⁴ See *supra* note 9 and accompanying text.

unanimous consent, it is impracticable in the modern era to rely on the chambers' default rules for scheduling legislation and unprecedented to elect either chamber's constitutional officers without a majority ratification. Meanwhile, it is less necessary for opposition third parties to cohere into a "minority faction," although doing so would allow them to access perks that could otherwise fall only to the largest minority party. But without organized majorities to speed organizing resolutions and legislation along, Congress would be incapacitated. The most pressing issue is forming an initial governing coalition, especially in the House; while the breakdown of a coalition partway through a Congress is also challenging, it does not pose the same risks to national security and continuity of government. For that reason, this Note also urges that the House take action to crisis-proof its speaker election and that parties take action to ensure they are able to negotiate coalitions with sufficient time before the January 3 convening of a new Congress.

II. TYPOLOGIZING CROSS-PARTY POWER-SHARING IN CONGRESS: THREE HISTORICAL MODELS

Not only *can* Congress operate under a multi-party system, but it *has already* done so. The starkest example is a multi-party coalition that governed the House during the Thirty-Fourth Congress in 1855–1857 as the Whig Party collapsed; it constituted itself variously as the "opposition" and the "anti-Nebraskas," and it elected a third-party speaker to represent the opposition coalition after two months and 133 ballots. But other cross-party power-sharing agreements have existed, too. Fault lines orthogonal to party membership—primarily sectional ties—resulted in a number of contested speakership elections between different sub-party coalitions in the antebellum period, and a Republican-aligned pro-silver faction ("bolters") controlled the balance of power in the Senate chamber in the late nineteenth century, aligning with Democrats on occasion.⁴⁵ A split between Progressive Republicans and the rest of the majority Republican Party resulted in a rotating five-person presidency *pro tempore* of the Senate during the Sixty-Second Congress in 1911–1912; the arrangement, which froze out the

⁴⁵ See Speaker Elections Decided by Multiple Ballots, U.S. House of Reps.: History, Art & Archives, <https://history.house.gov/People/Office/Speakers-Multiple-Ballots/> (last updated Oct. 25, 2023); Caroline Linton, House Speaker Finally Elected on 15th Ballot – The Most Since Before Civil War, CBS News (Jan. 7, 2023, at 12:37 ET), <https://www.cbsnews.com/news/kevin-mccarthy-house-speaker-multiple-ballots-history/>; Fred Wellborn, The Influence of the Silver-Republican Senators, 1889-1891, 14 Miss. Valley Hist. Rev. 462, 462, 465–69, 472 (1928).

Progressives, included a conservative Democrat as one of its quinquavirs. Finally, Congress operated throughout much of the twentieth century under what scholars have termed an informal three- or four-party system, where conservative Southern Democrats alternated working in coalition with conservative Republicans (to advance or block legislation, as in a procedural cartel) and the rest of the Democratic Party (to maintain party control over the chamber, as in an organizational cartel).

This Note uses these historical examples to create a novel typology of forms of multi-party or multi-faction coalition control in Congress. First, it describes what it will call the “shell majority” model, which involves informally or formally establishing a temporary overarching majority party to exert majority control. Next is the “officer rotation” model, which involves cycling different faction representatives through leadership positions for allotted periods of time. Finally, it describes the “nominal party coalition,” situations where members on the same party line represent divergent interests, as was the case between the liberal Democrats and the conservative Southern Democrats in the mid-twentieth century and the old guard Republicans and Progressive Republicans in the early twentieth century. Arguably, this phenomenon—where an established, yet fractured, party represents a loosely cohered coalition of internal sub-parties—is analytically just a special case of the “shell majority party” model. However, its unique feature is a strategic trade-off of the “procedural cartel” and “organizational cartel” aspects of majority governance in the chamber.

A. The Shell Majority Model in the Thirty-Fourth House of Representatives

In 1855, during the chaotic realignment period in the lead-up to the Civil War, a scattered collection of parties formally organized a coalition government to lead the House of Representatives.⁴⁶ The Whig Party was crumbling over sectional tensions and Know-Nothing nativism was increasingly unpopular, so during the Democratic presidential midterm of 1854, it was a loosely cohered mostly-Northern group of candidates—under a potpourri of party designations including Independent, Know-Nothing, American, Fusion, People’s Party, Anti-Nebraska, Anti-Administration, Whig, Free Soil Democratic, and Unionist—that ran against the incumbent pro-administration Democrats and Franklin Pierce, who were deeply unpopular after passing the Kansas-Nebraska Act.⁴⁷ Only about forty-six

⁴⁶ Joel H. Silbey, After “The First Northern Victory”: The Republican Party Comes to Congress, 1855–1856, 20 *J. Interdisc. Hist.* 1, 1 (1989).

⁴⁷ See *id.* at 3–4; see also William E. Gienapp, Nativism and the Creation of a Republican Majority in the North before the Civil War, 72 *J. Am. Hist.* 529, 530 (1985).

members called themselves Republicans by the time the Congress began, and there was no formal Republican Party yet.⁴⁸ The coalition members were loosely known as “anti-Nebraskas,” although contemporaries and later scholars adopted the label of “the Opposition.”⁴⁹ After the elections, the House contained 82 Democrats, 100 Opposition members, and 51 American Party members, who were generally split between Northern anti-Nebraskas (who caucused with the Opposition) and Southern pro-Nebraskas (who did not).⁵⁰ Although this hodgepodge Northern coalition “party” was short-lived, due to the ascendancy of the Republican Party and the political changes wrought by the onset of the Civil War, it operated as a temporary cameral majority.⁵¹

This historical case study also illustrates the coordination difficulties posed by multi-party governance in the House, particularly with respect to the election of a speaker. That election took an unprecedented two months and an equally unprecedented 133 ballots.⁵² Members of the Opposition had only met one time prior to the convening of the House, and that “partial caucus” was poorly-attended, disorganized, and chaotic.⁵³ That partial meeting lacked key American Party leaders and the only resolution it passed was one to not “support anyone for Speaker who would not make anti-Nebraska men a majority on every committee”—a proposal which its own proponents abandoned later as not feasible.⁵⁴ Without advance coordination, the first ballot for speaker was fractured between a staggering twenty-one candidates, seventeen of whom belonged in some way to the Opposition.⁵⁵

The default rule in the House is that a majority is required to elect a speaker, so the election proceeded to another ballot, and another, and

⁴⁸ Silbey, *supra* note 46, at 1.

⁴⁹ See Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789–1989*, at 33–34 (1989) (inventing the “Opposition” label). But see Michael J. Dubin, *United States Congressional Elections, 1788–1997*, at 174 (1998) (comparing Martis’s labeling with differences in contemporary labeling in the *Tribune Almanac*, 1856, which listed coalition members as “Anti-Nebraska men”).

⁵⁰ Fred Harvey Harrington, “The First Northern Victory”, 5 *J. Southern Hist.* 186, 187 (1939). The American Party result in this election is the most successful a third party has ever been in terms of attaining congressional seats. See Martis, *supra* note 49, at 34.

⁵¹ Silbey, *supra* note 46, at 3–4.

⁵² See *The Opening of the 34th Congress*, U.S. House of Reps.: Hist., Art & Archives, <https://history.house.gov/Historical-Highlights/1851-1900/The-Opening-of-the-34th-Congress/> (last visited May 13, 2026).

⁵³ Silbey, *supra* note 46, at 6.

⁵⁴ *Id.*; see Joshua R. Giddings, *History of the Rebellion: Its Authors and Causes* 383 (1864).

⁵⁵ See *The Opening of the 34th Congress*, U.S. House of Reps.: History, Art & Archives, <https://history.house.gov/Historical-Highlights/1851-1900/The-Opening-of-the-34th-Congress/> (last visited May 17, 2025); Silbey, *supra* note 46, at 5.

another.⁵⁶ Before the election of a speaker, House members are technically representatives-elect, and neither sworn in, nor paid, nor empowered to pass any legislation.⁵⁷ The House could not conduct any business until, after two months of maneuvering and a nearly-unprecedented vote to allow a plurality to elect a speaker, it narrowly elected American member Nathaniel Banks—a former Democrat and future Republican—as speaker by a margin of 103–100, in part because of a failure by the Democrats to rally the Southern Know-Nothings to support their candidate.⁵⁸ Some disputed the legality of the plurality vote, so institutionally-minded representatives in the chamber ratified the election with a majority vote for a formal resolution recognizing Banks as speaker.⁵⁹ House precedents have since made a point of emphasizing the majority ratification of speaker elections by plurality.⁶⁰

Electing a speaker is only the first task among several required to begin operating the House of Representatives. A rules package needs to be adopted, officers need to be appointed, and committees need to be constituted.⁶¹ It took eleven more ballots to elect the House's printer.⁶² Next, among such a loose coalition, "[c]ommittee construction was particularly difficult."⁶³ At the time, the Speaker populated the committees himself; now, after a 1910 revolt against Speaker Joseph Cannon, it is done by party leaders offering privileged resolutions.⁶⁴ Balancing a kaleidoscopic coalition of interests, parties, and blended or mutating affiliations, Speaker Banks arranged for Republicans and Whig-Republicans to chair three major committees, Whigs to chair three, Know-Nothings to chair one, and a Free Soil Democrat (and future Republican speaker), Galusha Grow, to chair the Territories Committee.⁶⁵ Republicans and Whigs collectively chaired twenty-one other committees, Know-Nothings and Whig-Americans chaired six and two other committees, respectively, and—perhaps

⁵⁶ Valerie Heitshusen, Cong. Rsch. Serv., R44243, *Electing the Speaker of the House of Representatives: Frequently Asked Questions* (2026).

⁵⁷ See Harrington, *supra* note 50, at 186, 203; 2 U.S.C. § 25.

⁵⁸ Harrington, *supra* note 50, at 201-02.

⁵⁹ *Id.*

⁶⁰ Wm. Holmes Brown, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* 157, 645 (2011). Lewis Deschler, 1 *Deschler's Precedents of the United States House of Representatives* 37 n.2 (1977) [hereinafter *Deschler's Precedents*].

⁶¹ Christopher Davis, Cong. Rsch. Serv., RL30725, *The First Day of a New Congress: A Guide to Proceedings on the House Floor* (2024).

⁶² Silbey, *supra* note 46, at 8.

⁶³ *Id.* at 9.

⁶⁴ See Floyd M. Riddick, *The United States Congress: Organization and Procedure* 86 (1949).

⁶⁵ See Silbey, *supra* note 46, at 11.

surprisingly—Democrats and Democratic-Americans controlled five other committees.⁶⁶

Yet after these chaotic opening months, this majority coalition government, as constituted, remained intact and governed the House for the remainder of its two-year term. Challenges remained and divisions continued throughout the Congress, making certain votes challenging, but this “shell majority” model worked. However, it required a speaker who was “maddening[ly] impartial[.]” in arbitrating his coalition’s divergent interests, as well as a broad allocation of power across committees led by key players in the coalition.⁶⁷

B. Officer Rotation Modeled in the Sixty-Second Senate

The president *pro tempore* is the only Senate leadership position described in the Constitution other than the Vice President’s role as President of the Senate; it is that person’s duty to serve as presiding officer while the chamber is in session and the Vice President is absent.⁶⁸ While a largely ceremonial and ministerial role, and limited in power, the presiding officer of the Senate is empowered to make initial, appealable parliamentary rulings and to thereby influence the chamber via procedural means.⁶⁹ The office of president *pro tempore* also comes with an increased salary and staff, and is within the line of presidential succession.⁷⁰

In 1911, the Senate experimented with a novel compromise to share the office of its president *pro tempore* among leaders of multiple factions. In April of that year, the longstanding holder of that position, Republican William Frye of Maine, resigned due to ill health.⁷¹ The Republican Conference nominated a replacement that its wing of Progressives did not support, in part because he had denied them certain committee assignments

⁶⁶ See *id.*; Journal of the House of Representatives, 34th Cong., 1st Sess., 501–03 (Feb. 13, 1856).

⁶⁷ Silbey, *supra* note 46, at 11.

⁶⁸ See U.S. Const., art. 1, § 3; Christopher M. Davis, Cong. Rsch. Serv., The President Pro Tempore of the Senate: History and Authority of the Office 2 (2015), https://www.congress.gov/crs_external_products/RL/PDF/RL30960/RL30960.13.pdf.

⁶⁹ See Davis, *supra* note 68, at 9; Floyd M. Riddick & Alan S. Frumin, Riddick’s Senate Procedure: Precedents and Practices 145 (1992) [hereinafter Riddick’s Precedents]. The president *pro tempore* also controlled a small patronage system until the mid-twentieth century. See *id.* at 11. The office of Senate Parliamentarian, a key advisor to the presiding officer on procedural questions, was not established until 1935. See First Official Parliamentarian, U.S. Senate, <https://www.senate.gov/about/officers-staff/secretary-of-the-senate/first-official-parliamentarian.htm> (last visited May 15, 2025). The president *pro tempore* may—and customarily does—devolve the role of being the presiding officer to his or her colleagues, while still retaining the power to take the chair. See Davis, *supra* note 68, at 8.

⁷⁰ See Davis, *supra* note 68, at 7, 11.

⁷¹ See Journal of the Senate of the United States of America, 62d Cong., 1st Sess., 38 (Apr. 27, 1911) [hereinafter Senate Journal]. Frye died months later. Frye, William Pierce, Biographical Directory of the U.S. (last visited May 13, 2026), <https://bioguide.congress.gov/search/bio/F000398>.

they had sought.⁷² Between the Progressive Republicans, the Democrats, and the remaining Republicans, the Senate was deadlocked for fifteen ballots through May, June, July, and into August, with no candidate able to obtain a majority.⁷³ While a majority vote is not expressly required by the Constitution for the election of House and Senate officers, the Senate refrained from adopting a plurality threshold, as was proposed in a point of order raised by Democratic senator William Stone.⁷⁴ The temporary presiding officer, Republican senator Henry Cabot Lodge, noted in ruling against Stone that the Constitution implies a majoritarian default rule for the election of congressional officers, and that the House had not yet broken from that rule.⁷⁵ Lacking support from the insurgent Progressives, who backed their own candidate, it is unsurprising that the Democratic plurality did not appeal Lodge's ruling; while the chair's rulings may be appealed, successfully doing so requires a majority vote.⁷⁶

With a Democratic or main-line Republican plurality unable to carry the day, the party leaders eventually negotiated a bipartisan compromise to resolve the deadlock, freezing out the Progressives. Members of a five-person quinquevirate were nominated and individually elected by unanimous acclamation to the position for limited periods of time.⁷⁷ Even though Republicans nominally controlled a majority of the chamber, the first person appointed president *pro tempore*—for a term of one day, to start—was a conservative Democratic senator, nominated by the Republican floor leader and elected by unanimous consent.⁷⁸ The position then rotated between four Republicans and that Democrat for the remainder of the Sixty-

⁷² See George E. Haynes, 1 *The Senate of the United States* 251–53 (1938); *Senate Deadlocked*, U.S. Senate, <https://www.senate.gov/about/officers-staff/president-pro-tempore/senate-deadlocked.htm> (last visited May 15, 2025). The result of the Republican Party's failure to appease its Progressive wing is an example of the importance of the "organizational cartel" feature of party governance. See *supra* note 11 and accompanying text.

⁷³ See Haynes, *supra* note 72, at 252; *Senate Journal*, *supra* note 71, at 60–169 (May 11–Aug. 13, 1911).

⁷⁴ See *Senate Journal*, *supra* note 71, at 62 (May 15, 1911).

⁷⁵ See *id.*; Davis, *supra* note 68, at 6; see also Martin B. Gold & Dimple Gupta, *The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster*, 28 *Harv. J.L. & Pub. Pol'y* 205, 260–72 (2004) (applying this principle to propose a "constitutional option" to eliminate the Senate filibuster by majority vote, which the Senate has since adopted in limited ways). While Lodge was correct that the House had not allowed a plurality alone to elect a speaker, the precedent the House set in the Thirty-Fourth Congress was not so clear-cut. See, e.g., *supra* Section 0.

⁷⁶ See *Senate Journal*, *supra* note 71, at 62; *Riddick's Precedents*, *supra* note 69, at 955, 1021 ("A majority, and not a plurality, vote is required to elect a President pro tempore and other officers of the Senate."); *Riddick's Precedents*, *supra* note 69, at 145 (requiring a majority to overrule a decision of the chair).

⁷⁷ See Haynes, *supra* note 72, at 252.

⁷⁸ See *Senate Journal*, *supra* note 71, at 169.

Second Congress, with each person usually holding office for no more than two weeks at a time.⁷⁹

This arrangement was an unprecedented and creative deployment of the Senate's rules, utilizing the unanimous consent procedure and Senate precedent that allowed it to establish term lengths. As a historical case study, it is a useful example of the ways a coalition can share control of key offices that are limited to a single officeholder. While the president *pro tempore* of the Senate is a relatively inconsequential figure, the same arrangement could be drawn up to share multi-party control over the offices of the Speaker of the House,⁸⁰ membership on the House Rules Committee, and chairmanships of House and Senate committees. In fact, the speaker has been elected by resolution, rather than ballot, twice.⁸¹ And rotating chairmanships are already a feature of congressional joint committees.⁸²

C. Nominal Party Coalitions in the Twentieth Century

The twentieth century in Congress was characterized by two sets of latent tensions between divergent factions within political parties: the Republican Party's divisions with its Progressive wing in the early part of the century, which ultimately led to defections to third parties and the Democratic Party, and the Democratic Party's mid-century divisions between its liberal members and its conservative Southern Democrats, which led to the Dixiecrat defection and defections to the Republican Party.⁸³

But before those intra-party coalitions collapsed, these two combinations of factions each shared power in organizing to hold offices and drive legislation. The Democrat/Dixiecrat coalition is a better comparator for the modern Congress because it was more robust, longer in duration, and more recent. Its unique feature was a trade-off in terms of the "cartelization" benefits of political party organization. The Southern Democrats essentially assembled one coalition—with the other Democrats—to create an organizational cartel, allowing them to obtain committee chairmanships, and then a second coalition—with conservative Republicans—to create a

⁷⁹ See Haynes, *supra* note 72, at 252.

⁸⁰ See *infra* Section 0.

⁸¹ See Deschler's Precedents, *supra* note 60, at 40–41.

⁸² See, e.g., Jessica Tollestrup, Cong. Rsch. Serv., R41519, History and Authority of the Joint Economic Committee 2 (2015).

⁸³ See generally Kari Frederickson, *The Dixiecrat Revolt and the End of the Solid South, 1932–1968* (2001).

procedural cartel, to stymie liberal and anti-segregationist legislation's passage through the Congress.⁸⁴

Because this type of power-sharing has already existed—and in some ways continues to exist—in the modern Congress, it is not the focus of this Note. However, it is a useful comparator in several ways. First, it is an illustrative representation of how a coalition might trade off power within a multi-party Congress. Second, its example could help show how a multi-party Congress might interact with a modern president.⁸⁵ Finally, it demonstrates what can happen when a coalition ruptures, as when the Dixiecrats broke off to run their quixotic segregationist presidential campaign in 1948.⁸⁶

III. CONGRESSIONAL RULES PERMIT MULTI-PARTY GOVERNANCE—BUT REQUIRE THAT THIRD PARTIES FORM A STANDING MAJORITY COALITION

Minor cosmetic and clerical changes aside, the rules and precedents in Congress can generally adapt to governance by multiple parties. However, they can only do so when those parties organize a majority coalition to act as a “shell majority” faction for the purposes of the rules and chamber organization—especially in the Senate.⁸⁷ Even though certain procedural mechanisms in the House and Senate can empower out-parties, like the House discharge petition and the Senate's reliance on unanimous consent,⁸⁸ any lack of an organized bloc of majority votes for regular procedural matters would cripple the operation of either chamber. Fundamentally, neither chamber's default rules for scheduling the consideration of legislation are sufficient for Congress to accomplish its business in a coherent way. A lack of a single majority leader designee in the Senate would make that chamber even harder to operate.

The election of officers similarly requires a majority coalition. Neither chamber has ever elected its constitutional officers, like the Speaker of the

⁸⁴ See generally Mack C. Shelley II, *The Permanent Majority: The Conservative Coalition in the United States Congress* (1983); Jeffery A. Jenkins & Nathan W. Monroe, *Negative Agenda Control and the Conservative Coalition in the U.S. House*, 76 J. Pol. 1116 (2014).

⁸⁵ Cf. Scott Mainwaring & Lee Drutman, *The Case for Multiparty Presidentialism in the United States* 9 (2023), <https://protectdemocracy.org/wp-content/uploads/2023/12/The-Case-for-Multiparty-Presidentialism.pdf> (discussing presidential interactions with Congress in the mid-twentieth century).

⁸⁶ See, e.g., Jerry Mitchell, 1948: Dixiecrats storm out of Democratic Convention, *Miss. Today: On this Day* (July 14, 2025), <https://mississippitoday.org/2025/07/14/1948-dixiecrats-democratic-convention/>.

⁸⁷ See *infra* Sections 0-0.

⁸⁸ Rules of the House of Representatives R. XV(2), H.R. Doc. No. 118-187, at 721–27 (2025) (stating the House's current rules on discharge motions).

House or the President *pro tempore* of the Senate, on a plurality basis; the House has come close, but its parliamentarians emphasize that on the occasions where a plurality of ballots have elected a speaker, the result was ratified by an outright majority of the House.⁸⁹ However, one advantage a coalition would have in terms of maintaining its coherence is the ability to establish a power-sharing “officer rotation” for leadership positions—even constitutional offices like the speakership—without major disruption.⁹⁰

A. *The House Remains Equipped for “Shell Majority” Coalitions*

The House Rules, *House Practice*, and prior compilations of precedents all incorporate many references to the “majority party” and the “minority party” throughout, and they assign responsibilities and privileges to the “Majority Leader” and “Minority Leader” specifically.⁹¹ There is no mention of any role for additional parties in the text of the rules, and the two-party system is implied throughout the Rules’ structure.⁹² While there is room in the House precedents for third parties, the rules typically shunt them toward participating in a majority or minority coalition, adding to the evidence that the House is best suited to a “shell majority” style of coalition government.

Although the Rules do not formally bind the House to the existing two-party system, they do seem to require at least a majority and a minority faction. The House precedents recognize that “the standing rules of the House address the respective major party caucuses,” but clarifies that they do so “primarily as an acknowledgment that such external organizations exist and have created their own leadership positions and internal hierarchies” and that the Rules “[do] not take formal cognizance of the internal rules of the” party caucuses, even as they assign party leaders special privileges and obligations.⁹³ Despite that characterization as “external,” the House’s collection of precedents also details the historical evolution of America’s two-party system and concludes that “the existence of majority and minority divisions within a legislative body is a fact that cannot be

⁸⁹ Davis, *supra* note 68, at 6.

⁹⁰ See *infra* Section 0.

⁹¹ See, e.g., Rules of the House of Representatives, R. X(2), H.R. Doc. No. 118-187, at 517 (2025) (“Not later than April 15 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the authorization and oversight plans submitted by committees under subparagraph (1) . . .”).

⁹² See, e.g., *id.* R. X(5), at 535 (“The Committee on the Budget shall be composed of members as follows . . . (B) one Member designated by the elected leadership of the majority party; and (C) one Member designated by the elected leadership of the minority party.”).

⁹³ House Precedents, *supra* note 30, at 232, 237.

wholly ignored by the established rules of procedure,” which is a tacit acknowledgment that the chamber might always require a majority and minority faction, even if not formal majority and minority parties.⁹⁴ For example, the House’s compilation of precedents notes that the Speaker can represent “the party *or faction* nominating” him or her for the office.⁹⁵ And since the cameral rules treat party and caucus organizing rules as external, a majority coalition would have free rein to establish itself in any form—as a caucus, as a conference, or as a loose alliance of caucuses—and to institute any binding rules among its members that it would like to.

Similarly, while the House precedents do encompass third parties’ placement on committees, they direct that those parties do so in partnership with the majority or the minority, by having either of those parties include them in the committee election resolutions it offers to the chamber.⁹⁶ Compilations of precedents state that “the role of third party caucuses in obtaining committee assignments for their members has been minimal.”⁹⁷ Instead, the default rule is that the majority will “customarily assume responsibility” for seating the third party on committees, although the more modern custom is for the third party to choose to associate with whichever party it wishes for the purpose of committee assignments, just as independent members do in both the House and Senate.⁹⁸ Thus the rules and precedents expect third parties to join either the majority or minority factions, upon pain of accepting the majority’s paternalism under the default rule.

While there are some ways that the House can allow a third party to stand alone, the rules incentivize third parties to join the majority or minority. For example, House precedents do allow third parties to elect their own floor leaders.⁹⁹ But because privileges specifically belong to “the Majority Leader” and “the Minority Leader” by rule and custom, it is not clear what privileges, if any, third party floor leaders would have. Instead, a third party could be better served by backing a “maddeningly impartial” figure, like Speaker Banks in 1855, to account for its interests within a broader majority or minority coalition.¹⁰⁰

⁹⁴ Id. at 232.

⁹⁵ Id. at 233 (emphasis added).

⁹⁶ See id. at 296–98.

⁹⁷ Deschler’s Precedents, *supra* note 60, at 182.

⁹⁸ See House Precedents, *supra* note 30, at 297–98.

⁹⁹ See Deschler’s Precedents, *supra* note 60, at 167; House Precedents, *supra* note 30, at 256 n.2.

¹⁰⁰ See *supra* Section II.A.

Meanwhile, because committee assignments are typically offered and accepted by the House through unanimous consent,¹⁰¹ the Rules might permit a third party to simply offer its own resolution to elect its members to committees. However, that strategy will only proceed without objection if the third party has already negotiated its share of seats with all parties' leadership. Committee ratios are negotiated by the parties at the start of each Congress based on the proportions of parties' power.¹⁰² And while the custom is to equalize the ratios of party representation on committees to the ratio of the balance of power in the House,¹⁰³ that custom might not be desirable for every minor third party. For example, rather than having one marginal seat on every committee, a Green Party might prefer to use all of its seats to control the House Committee on Natural Resources. That would require negotiation and consent by all parties, or risk being put to the floor for a majority vote, in which event the Greens would need the support of a majority coalition to succeed. Similarly, a third party's membership in either the majority or minority faction would allow its participation on certain evenly split committees, like the House Committee on Ethics, without compromising their unique, deadlocked power structure.

Finally, certain mechanisms in the House allow the constituencies among a multi-party coalition to enforce the terms of their agreement. For example, perhaps one sub-party unduly seeks to retain the speakership past its allotted term, or the person acting as "Majority Leader" for the coalition fails to schedule bills reported out from a third party-controlled committee as promised. The injured party could take various actions to maintain the coherence of the coalition and enforce the original bargain. First, perhaps it has won a seat on the Rules Committee and can stymie the coalition's other priorities until the deal is honored. Alternatively—if it preserved this power for itself when negotiating the original rules package for the Congress—it may make a privileged motion to vacate the chair, setting up a vote to recall the speaker that might succeed with the minority's help, but would be damaging even if it failed.¹⁰⁴ Lastly, the House has two devices that allow legislators to skirt around the procedural cartel enforced by the majority's

¹⁰¹ Michael Greene, Cong. Rsch. Serv., R46786, Rules Governing House Committee and Subcommittee Assignment Procedures 2 (2025), https://www.congress.gov/crs_external_products/R/P/DF/R46786/R46786.8.pdf ("While technically debatable and amendable, by long-standing practice, these resolutions have been agreed to by unanimous consent in tacit recognition by the parties of each other's right to determine committee assignments for their own Members.").

¹⁰² See House Precedents, *supra* note 30, at 311.

¹⁰³ Sarah J. Eckman, Cong. Rsch. Serv., R40478, House Committee Party Ratios: 98th-119th Congresses 3 (2025).

¹⁰⁴ Cf. *infra* note 175 and accompanying text (citing a recent use of the motion to vacate the chair and noting the requirements for doing so under current House rules).

scheduling team: the Consensus Calendar and the discharge petition. The Consensus Calendar is a recent invention that provides a mechanism for a bill sponsor to force a committee to report out a bill if it attains 290 cosponsors, or two-thirds of the House; House Rule XV then forces the Speaker to put one such bill onto the floor for consideration each legislative week.¹⁰⁵ Given the high threshold of support required, it will probably be of limited utility to third parties. Discharge petitions, meanwhile, may be initiated by any lawmaker to order a bill “discharged” from committee to the floor for a vote; as of this Congress, they require a majority of individual lawmakers’ signatures to become effective.¹⁰⁶ The theory is that if a majority of members support the bill, they should be entitled to vote on it, regardless of the leadership’s priorities. A third party could advance their legislation this way, with the support of a majority of the individual members in the chamber. *Or*, in negotiating the original rules package for the Congress, they could even lower the threshold required for a discharge petition to be successful—to perhaps 40% of the chamber or even establishing an alternate threshold percentage of the “majority party.”¹⁰⁷

Because a majority faction ultimately would control the chamber, it is important to note that it could change the rules and precedents of the House whenever it would like to, by majority vote, either during the initial organizing of the Congress or as a special resolution later into the session. In so doing, it could attempt to distribute floor privileges more broadly, establish new default rules for populating committees (to the extent the informality of that process contains “rules”), reassign budgets and office space, and make other adjustments. It could also make clerical updates to the House Rules to reflect multi-party governance, changing labels and terms accordingly.

B. A Senate Multi-Party Coalition Could Only Function as a Shell Majority, Although Individualism Presents Opportunities

Unlike in the House, the Senate’s rules and precedents do not address third-party participation or provide guidance on how third parties could constitute and organize themselves.¹⁰⁸ A third party has never elected its own floor leader in the Senate, so the chamber has never had to reckon with what

¹⁰⁵ Rules of the House of Representatives, R. XV(7), H.R. Doc. No. 118-187, at 734 (2025).

¹⁰⁶ Id. R. XV(2), at 722–23.

¹⁰⁷ Cf. id. at 721–27 (2025) (stating the House’s current rules on discharge motions). Members may be distinguished by majority and minority party status in the House Rules. See, e.g., Id. R. IX(2), at 440–63. Similar changes could be made to the Consensus Calendar, but they might defeat the spirit and purpose of it.

¹⁰⁸ Neither the Senate Rules nor Riddick’s Precedents, supra note 69, mention third parties.

that might entail.¹⁰⁹ Moreover, as described above, the Senate's rules and precedents are far more reliant on the majority and minority leaders for chamber procedure than the House's.¹¹⁰ Still, as in the House, the chamber's party organizations are external to the Senate Rules, and a "shell majority" coalition would be free to nominate its own majority leader to fill that role. An organized minority could also coalesce among multiple parties if it so desired, although presumably the largest minority party would be entitled to have its leader assume the mantle of "minority leader" even without a coalition.¹¹¹

As in the House, the sizes and party ratios of Senate committees are negotiated by the majority and minority leadership after the election, and then the party leaders pass a resolution to appoint individual members at the start of the new Congress. Appointment resolutions are customarily passed by unanimous consent, although they can be subjected to a majority vote.¹¹² Unlike in the House, however, there is a procedure—last employed in 1953—for committee appointments to be made by ballot on the Senate floor if, for example, a senator is not represented by either the majority or the minority.¹¹³ Although this procedure exists, a single senator standing alone is very unlikely to muster the votes to displace a party-backed senator from their choice of committee assignment; indeed, the senator who invoked this procedure in 1953 lost handily and rebuked his colleagues for "the precedent they have established with respect to the status of minority parties in the Senate in the future . . . a sort of garbage can principle is applied, the principle that the minority takes what is left."¹¹⁴ Ultimately, as is almost always the case in the Senate, the matter was resolved by joint agreement of the majority and minority leaders.¹¹⁵ Third parties unaffiliated with a major

¹⁰⁹ See About Parties and Leadership | Majority and Minority Leaders, U.S. Senate, <https://www.senate.gov/about/parties-leadership/majority-minority-leaders.htm> (last visited May 28, 2025).

¹¹⁰ See *supra* notes 25–27 and accompanying text.

¹¹¹ This arrangement would accord with other parliamentary practices around the world. See, e.g., Ministerial and Other Salaries Act 1975, c. 27, § 2(1) (U.K.) (codifying historical practice where the "Leader of the Opposition" is defined as "the Leader in that House of the party in opposition to Her Majesty's Government having the greatest numerical strength in the House of Commons").

¹¹² See Standing Rules of the Senate, Rs. XXIV–XXV, S. Doc. No. 113–18, at 24–41 (2013); Michael Greene, Cong. Rsch. Serv., R46806, Rules Governing Senate Committee and Subcommittee Assignment Procedures 3 (2024).

¹¹³ See Standing Rules of the Senate, R. XXIV, S. Doc. No. 113–18, at 24–25 (2013); Riddick's Precedents, *supra* note 69, at 395 n.15.

¹¹⁴ 99 Cong. Rec. 349 (1953). The senator, Wayne Morse, is referring to "minority" third parties and independents such as himself, as opposed to the "two . . . major parties." *Id.*; see *id.* at 327–52 (full context).

¹¹⁵ See *id.* at 350–52; Independent Fights for Committee Assignments, U.S. Senate,

coalition therefore may not get the committee assignment they want, especially if appointed independently by ballot. But unlike in the House, they cannot be frozen out entirely if they make an enemy of the majority or minority because the Senate Rules *require* senators to serve on two committees each.¹¹⁶

Meanwhile, the Senate is also more individualistic and egalitarian than the House. Its structure would give unaffiliated third parties plenty of influence in the chamber, even parties consisting of just one member. A single senator, for better or worse, can “hold up the works” in the Senate for extended periods of time by simply objecting to the unanimous consent agreements that govern the floor—or by offering amendments, not returning blue slips, and deploying countless other dilatory or obstructive devices.¹¹⁷ Ultimately, however, the only power that individual senators have in this context is a minoritarian veto power. To affirmatively set the legislative agenda, a senator must obtain the privilege of precedence of recognition by the presiding officer. But to obtain that privilege, a third party would need to create or join a coalition to form a “shell majority” caucus and appoint a majority leader to represent it.

C. Officer Rotations (and Enforcement Thereof) Are Permitted in Both Chambers, Even for Constitutional Officers

Given the more diverse interests that multi-party coalitions might represent, they may prefer to have more dispersed leadership than the major parties currently have. Fortunately, a multi-party coalition would be free to distribute a slate of *internal* leadership roles as broadly as it would like. Similarly, although parliamentary precedent does not support the appointment of multiple concurrently serving majority or minority

<https://www.senate.gov/about/origins-foundations/committee-system/independent-fights.htm> (last visited May 26, 2025).

¹¹⁶ See Standing Rules of the Senate, R. XXV(4)(a), S. Doc. No. 113-18, at 38 (2013). While I note above that the House majority “customarily” will take care of third parties in the event of non-alignment, it is also true that there is no equivalent House rule requiring its members to serve on committees, and since the House majority retains the power to strip members of their committee assignments, it could retain the power to not assign members to committees in the first place. See, e.g., H. Res. 72, 117th Cong. (2021) (enacted); H. Res. 789, 117th Cong. (2021) (enacted); H. Res. 76, 118th Cong. (2023) (enacted).

¹¹⁷ 133 Cong. Rec. 23742 (1987) (statement of Senator Byrd); see Oleszek et al., *supra* note 9, at 100 (quoting same). A preemptive threat to object to a unanimous consent request is also known as a “hold.” See generally Mark J. Oleszek, Cong. Rsch. Serv., R43563, “Holds” in the Senate (2017) (explaining the procedure and influence of holds in the Senate). A blue slip is a device the Senate Judiciary Committee uses to register the consent of senators to the appointment of individuals to judicial offices in their home states. It is formally a courtesy. See generally Barry J. McMillion, Cong. Rsch. Serv., R44975, The Blue Slip Process for U.S. Circuit and District Court Nominations (1917-Present) (2025) (explaining the blue slip process and its history).

leaders,¹¹⁸ the cameral rules' deference to internal party organizations for the selection of their floor leaders means that a party coalition could easily establish a power-sharing officer rotation for those roles.¹¹⁹ However, the Constitution specifies that only one House Speaker and Senate President *pro tempore* shall serve at one time.¹²⁰ But both the House and Senate permit power-sharing rotations—and mechanisms to enforce them—for their constitutional officers.¹²¹ Therefore, even if a coalition cannot reach a consensus on a single candidate to serve in those constitutional positions throughout the Congress, the coalition's constituent parties could follow the precedent set by the Sixty-Second Senate by establishing a power-sharing officer rotation.

First, neither chamber's rules limit the size of either party's leadership team; that matter is decided internally to the party (or coalition). Parties and coalitions may create, distribute, and rotate those roles freely. Indeed, the Democratic caucuses in the House and Senate have both expanded theirs significantly over recent years, so much so that now a little under one in four Democratic-aligned senators (eleven out of forty-seven) is a member of the caucus leadership.¹²² Similarly, while both the House and Senate precedents allocate privileges to a singular "majority leader" and "minority leader," the party or coalition caucuses would be free to rotate the position of leader among different stakeholders as they wished, pursuant to their internal rules.¹²³

However, the offices of Speaker of the House and President *pro tempore* of the Senate are constitutionally limited to one officeholder at a time, and those individuals must ultimately be appointed by the institutional rules of the chamber rather than internal party mechanisms. As seen in Part II, finding a consensus candidate for these positions can be difficult.¹²⁴

One option that might help to cohere a coalition would be rotating these constitutional offices between different officeholders, as was done in the

¹¹⁸ See, e.g., Rules of the House of Representatives, R. IX(2), H.R. Doc. No. 118-187, at 440–63 (2025) (affording privileges to "*the* Majority Leader" and "*the* Minority Leader" (emphasis added)); Standing Rules of the Senate, R. XV(1)(a), S. Doc. No. 113-18, at 13 (2013) (same).

¹¹⁹ See, e.g., Walter J. Oleszek, Cong. Rsch. Serv., RL30665, The Role of the House Majority Leader: An Overview 3–4 (2009); Mark J. Oleszek, Cong. Rsch. Serv., RL30666, The Role of the House Minority Leader: An Overview 2–3 (2019); About Parties and Leadership | Majority and Minority Leaders, U.S. Senate, <https://www.senate.gov/about/parties-leadership/majority-minority-leaders.htm> (last visited May 28, 2025).

¹²⁰ See U.S. Const., art. 1, § 2, cl. 5; id. art. 1, § 3, cl. 5.

¹²¹ See *supra* Section 0.

¹²² See Leadership & Officers, U.S. Senate, <https://www.senate.gov/senators/leadership.htm> (last visited May 28, 2025).

¹²³ See *supra* notes 39–41, 118–119 and accompanying text.

¹²⁴ See *supra* Sections 0–0.

Sixty-Second Senate in 1911–1912.¹²⁵ Balloting would not be necessary: as described above, House speakers and Senate presidents *pro tempore* have both been elected by resolution before, and Senate precedent indicates that those resolutions can delimit the officeholder's time in the position to a fixed term.¹²⁶ Moreover, similar matters of internal organization are committed to each chamber's discretion under the Rules of Proceedings Clause.¹²⁷ The coalition could lock itself into a commitment in advance. At the start of the Congress, for example, a House member could offer a privileged resolution to elect one person speaker for a year's term, to be followed by a different person for a term to begin the following year. Or even without setting a fixed term, an internal caucus or informal agreement could be enforced by deploying the privileged House motion to vacate or a Senate resolution. These additional methods to enhance the sharing of power across a coalition may help a majority government to cohere among multiple parties.

IV. PROBLEMATIC STATUTES

Certain framework statutes, spending authorizations, and statutes regarding appointments would require updating or present new complications. Certain statutes assign benefits specifically to Republican and Democratic party members and leadership entities, without qualification. Other statutes name Democratic and Republican beneficiaries or appointees, but they appropriately leave room open for other entities to qualify. Finally, the statutes setting out appointment schemes for independent agencies and commissions *assume* a two-party system without naming one, introducing a potential for gamesmanship in a multi-party environment.

A. Title 2 Statutes that Name Specific Political Parties

Over the years, Congress has passed a number of statutes that specifically name members of political parties to certain positions in government. Most of these are in Title 2, the part of the U.S. Code having to do with the organization of Congress, but others are scattered throughout civil and criminal provisions of the U.S. Code.

¹²⁵ See *supra* Section 0.

¹²⁶ See *id.*; see also H. Res. 787, 118th Cong. (as introduced in the House, Oct. 16, 2023) (resolving to elect Patrick McHenry as speaker *pro tempore*).

¹²⁷ See U.S. Const. art. I, § 5, cl. 2.; *supra* note 37 and accompanying text (discussing the unavailability of judicial review).

Many statutes in Title 2 derive their constitutional authority from the Rules of Proceedings Clause, which makes them less reviewable because the Constitution explicitly allocates power over the chambers' operations to the House and Senate in near-entirety.¹²⁸ But unlike the procedural framework statutes described in Part 0, which a chamber might, in theory, be able to unilaterally ignore, some of these statutes would require a proper repeal.

2 U.S.C. § 5161 establishes funding accounts in the House of Representatives for the “training and program development activities of the Republican Conference and the Democratic Steering and Policy Committee,” without any catchall or residual provisions allowing money to flow to a new party’s accounts.¹²⁹ As a substantive authorization of legislative branch appropriations, rather than a mere procedural “statutized rule,” this statute cannot be unilaterally bypassed by the House with only a rule change.¹³⁰

2 U.S.C. § 2202 governs the designation and naming of places within the U.S. Capitol Visitor Center by the Capitol Preservation Commission, and it requires three-quarters of the Commission’s “members of the Democratic party” and “members of the Republican party” to approve designations.¹³¹ Consistent with the Rules of Proceedings Clause, this provision explicitly excludes rooms or spaces under the exclusive jurisdiction of either chamber.¹³² Although it is up to Congress’s discretion as to how it will organize itself and operate its buildings, a multi-party coalition would need to proceed bicamerally to revise this statute to reflect a new balance of power.¹³³

42 U.S.C. § 1314b(c)(2) requires the Secretary of Health and Human Services to appoint a Republican and a Democratic governor to the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States.¹³⁴ While this provision is an admirable display of

¹²⁸ See, e.g., *Consumers Union v. Periodical Correspondents Ass’n*, 515 F.2d 1341, 1350–51 (D.C. Cir. 1975) (affirming Congress’s power to execute the “internal rules of Congress validly enacted under authority specifically granted to the Congress and within the scope of authority appropriately delegated by it”). But see *Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 952, 956 (1983) (requiring Congress to maintain the constitutionally required system of bicameralism and presentment).

¹²⁹ 2 U.S.C. § 5161.

¹³⁰ Cf. *Chadha*, 462 U.S. at 955 (“There are but four provisions in the Constitution, explicit and unambiguous, by which one House may act alone with the unreviewable force of law, not subject to the President’s veto.”).

¹³¹ 2 U.S.C. § 2202(a).

¹³² See *id.* § 2202(b).

¹³³ This is because (1) Members of Congress have a Speech and Debate Clause immunity for legislative acts, and (2) a plaintiff usually cannot make out a showing of standing in these cases, see, e.g., *McCarthy v. Pelosi*, 5 F.4th 34, 40 (D.C. Cir. 2021).

¹³⁴ See 42 U.S.C. § 1314b(c)(2).

bipartisanship, the statute's text arbitrarily freezes out non-Republican and non-Democratic governors. This statute could be amended to instruct that the Secretary must choose two governors from different political parties, perhaps the two largest parties, without naming specific ones.

Similarly, the franking privilege, 39 U.S.C. § 3215, enables the holder to send mail without postage, and currently extends only to each chamber's Republican conference and the Democratic caucus, rather than all party organizations seated in the Congress.¹³⁵ The statute would need to be updated to distribute the franking privilege among all party organizations—or at least all those above a certain size threshold.¹³⁶

Certain statutes outside of Title 2 do explicitly name Republicans and Democrats, but they are acceptable because they anticipate other possibilities. For example, a government anti-bribery statute located at 18 U.S.C. § 207 identifies members of the “leadership” of the House and Senate to include specific named positions within the Republican and Democratic congressional party organizations, such as the “Democratic Steering Committee” and the “Republican Policy Committee.”¹³⁷ The statute, however, also encompasses “any similar position created on or after the effective date.”¹³⁸ The statutory language thus likely permits a future administration to classify third party leadership as chamber “leadership” for the purposes of the anti-bribery statute.

B. Independent Agencies and Commissions

Conversely, there are a number of statutes that operate on the background assumption that only two political parties will be competing for appointed positions, but do not explicitly name them. Specifically, the statutes that establish multi-member independent commissions and agencies—such as the Federal Trade Commission, the Securities and Exchange Commission, and the Consumer Product Safety Commission—all direct that “[n]ot more than three of [the commissioners] shall be members of the same political

¹³⁵ See 39 U.S.C. § 3215. See generally Matthew E. Glassman, Cong. Rsch. Serv., RL34274, *Franking Privilege: Historical Development and Options for Change* (2016) (describing the history and operation of the franking privilege).

¹³⁶ See, e.g., 39 U.S.C. § 3626(e)(2)(A) (naming the Republican and Democratic parties for the purposes of reduced postage rates, but also allowing for any qualified “State committee of a political party” to claim the benefit).

¹³⁷ See 18 U.S.C. § 207(e)(9)(L)–(M).

¹³⁸ *Id.*; see also 22 U.S.C. § 4414(a) (prohibiting funding for the National Endowment for Democracy from flowing to the Republican and Democratic national committees, but also from being spent “on behalf of *any* candidate for public office, or on behalf of *any* political party in the United States.” (emphasis added)).

party.”¹³⁹ The idea, and the historical tradition, has been for a majority of members to be of the president’s party, and for a minority of members to be of the out-of-power party.¹⁴⁰ Yet the text of the statute requires nothing of the sort. Appointment schemes for independent commissions could operate differently in a multi-party government. After appointing three members of her own party, the president could then add two independents, third-party members, or members who are merely nominal members of the opposition coalition, rather than true opposition party members.¹⁴¹ In a multi-party environment, the promise of allocating out-party seats to third-party coalition allies is even more alluring. While understanding the impacts of multi-party governance on independent agencies is beyond the main scope of this Note, it is worthwhile to note that changes in the composition of Congress might result in significant knock-on changes to entities like the independent commissions.¹⁴²

V. THREE PRIMARY RISKS TO ADDRESS

This Part addresses three major risks to congressional governance that the rise of multi-party governance in Congress would pose. The first risk the institution might face relates to the mechanics of RCV elections, which take longer to tabulate than first-past-the-post elections.¹⁴³ Even if the two major parties retain their shared duopoly over the chamber, they may have to wait longer than usual to learn which party will control the chamber, which would impact internal party organization and leadership elections that occur in the November immediately following a general election. Next, if third parties successfully prevented any single party from holding an outright majority, at least two political parties would need to negotiate to form a majority

¹³⁹ 15 U.S.C. § 41 (Federal Trade Commission); 15 U.S.C. § 78d (Securities and Exchange Commission); 15 U.S.C. § 2053(c) (Consumer Product Safety Commission). Similar provisions govern appointments to the Federal Elections Commission, see 52 U.S.C. § 30106, the Federal Communications Commission, see 47 U.S.C. § 154, and others.

¹⁴⁰ See, e.g., Brian D. Feinstein & Daniel J. Hemel, *Partisan Balance with Bite*, 118 *Colum. L. Rev.* 9, 17–22 (2018).

¹⁴¹ See *id.* at 11.

¹⁴² However, presidential adherence to the true “spirit” of partisan balance requirements is a somewhat new phenomenon; previously, before party polarization, presidents tended to appoint like-minded members from both the Republican and Democratic parties alike. See Feinstein & Hemel, *supra* note 140, at 44.

¹⁴³ See, e.g., *Ranked Choice Voting in Practice: Implementation Considerations for Policymakers*, Nat’l Conf. of State Legis. (Sep. 28, 2022), <https://www.ncsl.org/elections-and-campaigns/ranked-choice-voting-in-practice-implementation-considerations-for-policymakers> (“In NCSL’s survey of local election officials, of the 12 responding jurisdictions that have already implemented RCV, nine reported delays. These jurisdictions often used emphatic language to describe how delayed the results were. Three reported no delays.”).

coalition.¹⁴⁴ The time it takes to negotiate, combined with the potential delay of RCV tabulation, could be significant. Parties would need to act quickly and proactively to cohere with enough time to be ready for the first day of the new Congress on January 3—when chamber leadership is formally elected, floor leaders are designated, cameral rules are set, and committees are constituted.¹⁴⁵ But if they fail, alternatives need to be in place to mitigate the risks to national security and continuity of government that result from, for example, a failure in the House to elect a speaker or a failure in the Senate to organize to rapidly confirm cabinet nominees. Finally, additional consideration would have to be given to operating each chamber if a governing coalition in that chamber were to break down mid-way through a Congress. That contingency would not pose risks as serious as those posed by a failure to initially organize that chamber.

A. Potential RCV Vote Tabulation Delays Impair Internal Party Caucus Organization

When night falls on the first Tuesday after the first Monday in November in presidential and midterm years, Congress is not finished with elections. It is just getting started. Once the results of the general election are clear, parties and caucuses begin organizing for the next session: electing their leadership, appointing members to committees, and vying for committee and subcommittee gavels.¹⁴⁶ The House and Senate Republican Conferences typically begin their preparation in mid-November, with the House and Senate Democratic Caucuses often waiting until after Thanksgiving.¹⁴⁷

¹⁴⁴ See *supra* Part III.

¹⁴⁵ See also Judy Schneider, Cong. Rsch. Serv., RS21339, Congress's Early Organization Meetings 1–2 (2016) (describing aspects of preparation).

¹⁴⁶ See, e.g., Lindsey McPherson & Rema Rahman, A Guide to House Leadership, Committee, Caucus Elections, Roll Call (Nov. 3, 2016, at 05:00 ET), <https://rollcall.com/2016/11/03/a-guide-to-house-leadership-committee-caucus-elections/>.

¹⁴⁷ See, e.g., Claudia Grisales, McCarthy, Other Top House Republicans Reelected to Leadership Posts for Next Congress, NPR (Nov. 17, 2020, at 17:30 ET), <https://www.npr.org/2020/11/17/935857695/mccarthy-other-top-house-republicans-reelected-to-leadership-posts-for-next-cong>; Jake Sherman et al., The Big Rush: GOP Sets Nov. 13 for Leadership Showdowns, Punchbowl News (Oct. 30, 2024), <https://punchbowl.news/article/washington/hill-republicans-set-date-for-leadership-elections/>; Mary Ellen McIntire, Senate Democrats Approve Leadership Team for New Congress, Roll Call (Dec. 3, 2024, at 17:17 ET), <https://rollcall.com/2024/12/03/senate-democrats-leadership-klobuchar-booker-2/>; Sahil Kapur & Frank Thorp V, McConnell Re-Elected Senate GOP Leader, Defeating Challenger Rick Scott, NBC News (Nov. 16, 2022, at 13:39 ET), <https://www.nbcnews.com/politics/congress/mcconnell-re-elected-senate-gop-leader-defeating-challenge-rick-scott-rcna57487>. The author of this Note was present for the 2022 House Democratic Caucus organizational meetings, the bulk of which took place over several days from November 30 to December 6, 2022.

Everything needs to be ready before the new Congress begins on January 3.¹⁴⁸

But when control of congressional chambers depends on increasingly narrow majorities, it takes longer after an election to determine with certainty which party will eke out a majority. For example, Democrats knew hours after the polls closed in the 2018 election that they would control the House, and Republicans knew they would control the Senate.¹⁴⁹ Meanwhile, Senate control after the 2020 election was not determined until after the Georgia runoffs in early January 2021, two months after the general election.¹⁵⁰ And in 2022, the first official projections of Republican control of the House came out over a week after Election Day.¹⁵¹ In fact, House Republicans resorted to conducting the internal election for their speaker nominee, Kevin McCarthy, while still uncertain as to whether they would have the majority.¹⁵²

Congressional races that feature a RCV runoff are poised to exacerbate this problem because they take longer to tabulate and report their final results.¹⁵³ In 2022, Maine's second district and Alaska's at-large district each sent members to the U.S. House of Representatives after a round of RCV runoff tabulation; it took over a week after Election Day to report the result in Maine and two weeks to report the result in Alaska.¹⁵⁴

¹⁴⁸ See generally Christopher M. Davis, Cong. Rsch. Serv., RL30725, *The First Day of a New Congress: A Guide to Proceedings on the House Floor* (2024) (describing action items); Valerie Heitshusen, Cong. Rsch. Serv., RS20722, *The First Day of a New Congress: A Guide to Proceedings on the Senate Floor* (2024) (same).

¹⁴⁹ See, e.g., Cheyenne Haslett, 5 Key Takeaways from the 2018 Midterm Elections, ABC News (Nov. 7, 2018, at 15:46 ET), <https://abcnews.go.com/Politics/key-takeaways-2018-midterm-elections/story?id=59024592>.

¹⁵⁰ See Steve Peoples et al., Warnock, Ossoff Win in Georgia, Handing Dems Senate Control, AP (Jan. 6, 2021, at 17:06 ET), <https://apnews.com/article/georgia-election-results-4b82ba7ee3cc74d33e68daadaec2cbf3>.

¹⁵¹ See Kevin Breuninger, Republicans Take Control of the House, NBC News Projects, NBC News (Nov. 16, 2022, at 19:11 ET), <https://www.cnbc.com/2022/11/16/midterm-house-elections-2022-republicans-take-control-of-the-house.html>.

¹⁵² See House Republicans Hold Leadership Elections Today While Awaiting Full 218 Seat Majority, Edelman (Nov. 15, 2022), <https://www.edelmanglobaladvisory.com/in-session/november-15-2022>; see also Scott Wong, Republicans Win the House, NBC News Projects, as Trump's Party Takes Full Control of Washington, NBC News (Nov. 13, 2024, at 15:04 ET), <https://www.nbcnews.com/politics/2024-election/republicans-win-house-majority-trump-party-senate-control-rcna179231> (describing a House Republican leadership election that took place mere hours after it was finally projected that Republicans would hold the House, a twist of scheduling luck).

¹⁵³ But see William T. Adler, Ranked Choice Voting Results Don't Have to Be Slow, Ctr. for Democracy & Tech. (Aug. 23, 2022), <https://cdt.org/insights/ranked-choice-voting-results-dont-have-to-be-slow/>.

¹⁵⁴ See Kevin Miller, Jared Golden Prevails Over Bruce Poliquin After Ranked-Choice Runoff, Maine Public (Nov. 16, 2022, at 18:28 ET), <https://www.mainepublic.org/politics/2022-11-16/jared->

Tabulation delays are a serious problem in House organization because majority or minority status affects the number of leadership positions a party must account for in its internal elections. Both parties must elect a floor leader and lower positions, but only the incoming majority party additionally elects a speaker-designate, which is its most senior position.¹⁵⁵ Although speaker-designate is the top prize, serious party leadership candidates will only seek to run for the speakership if they know they will have the majority (and thus, actually obtain the speakership).

A delayed result is not a significant problem in the Senate unless it affects a candidate for a leadership position individually. Senate party elections do not involve an additional majority-only senior post equivalent to that of speaker-designate (at least as long as the office of president *pro tempore* remains an honorific position).¹⁵⁶

Parties must be prepared to adapt their internal organization to a potential reality where control of the chamber is not determined for several weeks after Election Day. For example, the current Republican timeline is likely too early; it has already faced one or two close calls.¹⁵⁷ If a party organization in the House is forced to run an election without knowing whether or not it should account for a speaker-designate, there are two possible courses of action. First, the party's highest-ranking member runs to be speaker-designate, risking losing their position if the party ultimately does not have a majority. Alternatively, the party can proceed without electing a speaker-designate. After any late projections are returned, the party can hold a new meeting to elect a speaker-designate and back-fill positions if that election results in a vacancy. This plan would better protect senior party members from making an unnecessary gamble. But because the most likely person to be elected speaker-designate is the party leader, proceeding with this plan may trigger another time-consuming wave of elections where each lower-ranked person would seek to move up one position. Parties would therefore do well to consider adopting rules to automatically "promote" individuals along a line of succession if the party leader is moved up to the position of

golden-prevails-over-bruce-poliquin-after-ranked-choice-runoff; Maanvi Singh, Mary Peltola, First Alaska Native in Congress, Wins Bid to Retain Seat, *The Guardian* (Nov. 23, 2022, at 21:53 ET), <https://www.theguardian.com/us-news/2022/nov/23/mary-peltola-wins-alaska-democrat>.

¹⁵⁵ See, e.g., House Democratic Caucus Rules, *supra* note 39, at 3, 6.

¹⁵⁶ It is very rare to see a member of party leadership face a close election for their seat; leadership members hail from some of the safest seats in Congress. But see Jonathan Martin, Eric Cantor Defeated by David Brat, Tea Party Challenger, in G.O.P. Primary Upset, *N.Y. Times* (June 10, 2014), <https://www.nytimes.com/2014/06/11/us/politics/eric-cantor-loses-gop-primary.html>.

¹⁵⁷ See *supra* note 152 and accompanying text.

speaker.¹⁵⁸ Creating contingency succession rules would also make it easier for a party to organize itself in a multi-party Congress where multiple party leaders within a coalition might compete with one another to be nominated for the speakership by their shared faction, or where they might rotate the position of speaker among themselves.¹⁵⁹

Arguably, the easiest thing to do would be to move internal party elections later into November and December. However, if Congress eventually slid into a multi-party environment with the continued adoption of RCV, delaying the election of party leaders would also delay necessary coalition negotiations—because those negotiations would presumably be led by those same party leaders after their election to those positions. A more fluid system in which party caucuses are able to elect their leadership immediately, with flexibility built in as needed regarding the speaker-designate role, would be useful.

B. Delays in Coalition Formation Could Incapacitate the House

This Section explains that delays or deadlock in negotiating a multi-party coalition to govern a chamber would jeopardize the operation of the House more than the Senate. Its most important conclusion is that Congress must crisis-proof the House speaker election.

The election of a speaker is essential to the functioning of the House. It cannot start operating without it, because a federal statute requires the Speaker of the House to swear in the representatives-elect.¹⁶⁰ But the speaker must first be elected by a majority of those representatives-elect, at least by default.¹⁶¹ If a modern multi-party coalition failed to organize, the House would be trapped in limbo indefinitely, just as it was in 1855, with its floor paralyzed, its members unsworn, and its committees not populated.¹⁶² The consequences of failing to elect a speaker were on full display in 2023 when the Republican Party failed to coalesce behind its nominee for the speakership, Kevin McCarthy. New and returning representatives alike were unable to receive official oversight correspondence from federal agencies, attend classified briefings, create committees and subpoena witnesses, and

¹⁵⁸ The parties' current rules do not have such a provision. See generally House Democratic Caucus Rules, *supra* note 39 (containing internal rules); House Republican Conference Rules, *supra* note 39 (same).

¹⁵⁹ See *supra* Part 0.

¹⁶⁰ See 2 U.S.C. § 25.

¹⁶¹ And a plurality result may still require majority ratification, depending on an unresolved question of House precedent. See *supra* Section 0.

¹⁶² See *id.*

pay certain staff.¹⁶³ Those four days, where a branch of the U.S. government was functionally inoperative, were viewed as a serious national security risk.¹⁶⁴ Two months, like the delay in 1855, would be catastrophic.¹⁶⁵

In the face of these risks, which are more likely if multiple parties must negotiate control of their coalition, Congress has several options. The first is to amend the statute that requires the Speaker to swear in members, 2 U.S.C. § 25.¹⁶⁶ Perhaps instead the Clerk of the House, a Supreme Court justice, an acting clerk, the parliamentarian, or the Dean of the House could lead the oath. Even a lucky member drawn at random or a visiting honorific guest could take on this responsibility. Moreover, the statute itself might have become unconstitutional after the ratification of the Twentieth Amendment by potentially impeding members of Congress from starting their new term on the constitutionally specified date of January 3.¹⁶⁷ Alternatively, because the choreographing of the oath is a matter purely internal to the rules of the House's proceedings, the House might unilaterally pass a resolution to disregard the statute and swear in its members another way.¹⁶⁸ Alternatively, the chamber could pass a resolution (potentially by unanimous consent) electing the Dean of the House or some kind of consensus candidate as speaker *pro tempore* at the start of a Congress until representatives-elect are sworn in.¹⁶⁹ Any of these options would help to crisis-proof the speaker election and head off the dangerous risks described above—risks which, after the delays experienced in 2023, are no longer unprecedented in the modern era.

¹⁶³ See Luke Broadwater, Lacking a Speaker, One Part of Government Ceases to Function, N.Y. Times (Jan. 4, 2023), <https://www.nytimes.com/2023/01/04/us/politics/house-speaker-representatives.html>; Dan Zak & Ben Terris, Does the House Even Exist Right Now?, Wash. Post (Jan. 4, 2023), <https://www.washingtonpost.com/lifestyle/2023/01/04/house-of-representatives-in-purgatory-without-speaker/>; Jordain Carney, House Committee Staffers Face No Pay if Speaker Isn't Decided by Jan. 13, Officials Warn, Politico (Dec. 29, 2022, at 12:15 ET), <https://www.politico.com/news/2022/12/29/house-committee-staff-pay-speaker-decision-00075801>.

¹⁶⁴ See Natasha Bertrand, How the Speaker Impasse Is Impacting US National Security, CNN (Jan. 5, 2023, at 14:12 ET), <https://www.cnn.com/2023/01/05/politics/speaker-congress-national-security>.

¹⁶⁵ See *supra* Section 0.

¹⁶⁶ See Act of June 1, 1789, ch. 1, § 2, 1 Stat. 23, 23 (1789).

¹⁶⁷ See Thomas A. Berry, The 118th Congress Still Hasn't Been Sworn In. Is that Constitutional?, Cato Inst.: Cato at Liberty (Jan. 6, 2023, at 10:52 ET), <https://www.cato.org/blog/118th-congress-still-hasnt-been-sworn-constitutional>.

¹⁶⁸ Cf. *supra* note 35 and accompanying text (explaining why the Constitution might permit a chamber to unilaterally ignore "statutized rules" regarding cameral proceedings).

¹⁶⁹ Cf. *supra* Section 0 (describing other possible elections by resolution); Justin Walker, The Speaker Pro Tempore's Powers, Harv. L. Rev. Blog (Oct. 23, 2023), <https://harvardlawreview.org/blog/2023/10/the-speaker-pro-tempores-powers/> (describing the limited powers of a speaker *pro tempore* appointed via House Rule I, clause 8(b)(6)).

Unlike the election of the House speaker, the election of a senator to the position of President *pro tempore* of the Senate is not a privileged matter,¹⁷⁰ and that election may be put aside by the chamber in the event of a deadlock if it needs to proceed to more important business. The Senate only recognizes a certain few privileged questions that may not be deferred on the floor: questions and motions regarding the presentation of senators' credentials, motions to amend or correct the Journal, questions upon which cloture has been invoked, and questions where statute provides for privileged consideration, such as budget reconciliation.¹⁷¹

The Senate is also better equipped to head off certain national security risks that might otherwise be posed by a failure of the chamber to organize. It is critical for the Senate to confirm key cabinet positions, like the Secretary of State and national security positions, as soon as possible after the President is sworn in on January 20.¹⁷² Under ordinary Senate legislative procedure, this feat would be difficult to accomplish without a firmly established pair of majority and minority leaders working together via unanimous consent. However, as described above, the Senate considers nominees in executive session, which proceeds differently from legislative session. Even if a nomination might later be subject to cloture requirements, an initial "motion to enter executive session to consider a specified nomination [on the executive calendar] is not debatable,"¹⁷³ meaning that it is a rare, privileged motion which senators can offer from the floor. Thus, a senator can at least force consideration of a nominee. Yet this workaround is not quite a cure-all. To be placed on the executive calendar, a nomination must first be reported from committee, which means that committee must have members—members appointed pursuant to a Senate resolution negotiated by the party leaders.¹⁷⁴ So the Senate would need to collectively work around that issue.

¹⁷⁰ See 75 Cong. Rec. 1370 (1932) (parliamentary ruling of the vice president, as President of the Senate, on this question).

¹⁷¹ See *id.*; Senate Rule II, Rule IV, Rule XXII; Congressional Budget Act of 1974 § 310, 2 U.S.C. § 641; see also Haynes, *supra* note 72, at 268.

¹⁷² See, e.g., Carlos Galina, Paul Hitlin & Mary-Courtney Murphy, *Slow Nominations and Confirmations Pose a Threat to National Security*, P'ship Pub. Serv.: Ctr. for Presidential Transition 4, 12 (May 24, 2022), <https://presidentialtransition.org/reports-publications/slow-presidential-nominations-and-senate-confirmations-pose-a-threat-to-national-security/>; Thomas Kaplan & Jennifer Steinhauer, *Senate Confirms Mattis at Defense and Kelly for Homeland Security*, N.Y. Times (Jan. 20, 2017), <https://www.nytimes.com/2017/01/20/us/politics/trump-cabinet-confirmation-mattis-kelly.html>.

¹⁷³ Elizabeth Rybicki & Michael Greene, Cong. Rsch. Serv., RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure* 8 (Oct. 1, 2025).

¹⁷⁴ See *id.*; Greene, *supra* note 112, at 3.

C. Subsequent Breakdowns of Governing Coalitions Are Less Dangerous than an Initial Failure to Form One

Governing coalitions can collapse.¹⁷⁵ What would happen if a majority coalition broke down over the course of governing a chamber, and different parties recombined into a new majority to take control? Both chambers have previewed what this contingency might look like, and the upshot is that a coalition breakdown part-way through a Congress is significantly less dangerous than a failure to initially organize a Congress. Once again, prospective troubles are greater in the majority-driven House than in the egalitarian, consensus-driven Senate.

Mechanically, a coalition breakdown in the House would look similar to the ousting of Speaker Kevin McCarthy in October 2023. A requisite number of newly-dissident coalition members would make a privileged motion to declare the Office of the Speaker vacant, removing her from office.¹⁷⁶ Should they succeed, the speaker would be replaced by a speaker *pro tempore* of her choosing pursuant to House Rule I, clause 8(b)(3), a provision adopted in the wake of the September 11 attacks.¹⁷⁷ The House's immediate business must be to elect a new speaker, and the speaker *pro tempore* may only wield his or her power "as may be necessary and appropriate to that end."¹⁷⁸ Eventually, a new speaker must be elected. The new majority, after determining its own internal rules for committee appointments and leadership nominations, could shepherd its speaker-designate through a speaker election and pass new resolutions to effect the new majority's desired changes in committee chairmanships and

¹⁷⁵ See, e.g., Christopher F. Scheutze, How to Understand the Collapse of Germany's Government, and What's Next, N.Y. Times (Dec. 16, 2024), <https://www.nytimes.com/2024/12/16/world/europe/germany-government-collapse-olaf-scholz.html>.

¹⁷⁶ See Rules of the House of Representatives, R. IX(2)(a)(3), H.R. Doc. No. 118-187, at 441 (2025). Under current rules, the motion requires a majority-party sponsor and "eight cosponsors from the majority party" in order to be privileged, the first time in history that the minority party has no power to offer the motion with privilege. *Id.*; see Andrew Solender, House Approves New Rules Protecting Mike Johnson from Ouster, Axios (Jan. 3, 2025), <https://www.axios.com/2025/01/03/mike-johnson-motion-to-vacate-new-rule-passed>. Ideally, a pluralistic House would have a more pluralistic way to approach the motion to vacate. In the 118th Congress, any member could make a privileged motion to declare the Office of the Speaker to be vacant. See H. Res. 5, 118th Cong. (2023) (enacted). But see Carl Hulse, Will the Motion to Vacate be Vacated?, N.Y. Times (Oct. 10, 2023), <https://www.nytimes.com/2023/10/07/us/politics/motion-to-vacate-house-speaker.html> (collecting criticisms of that practice). This Note accepts the Rules as they are currently written.

¹⁷⁷ See Walker, *supra* note 169.

¹⁷⁸ Rules of the House of Representatives, R. I(8)(b)(3)(A), H.R. Doc. No. 118-187, at 369–70 (2025).

memberships. The new speaker and his or her majority could also remove existing members and appoint new ones to the powerful Rules Committee.¹⁷⁹

The most significant risk to continuity of government here would be that the House cannot proceed to legislative business until it resolves the vacancy. Under House Rule I, the speaker *pro tempore* is not endowed with the powers of a bona fide elected speaker.¹⁸⁰ Presumably, overseeing the ordinary passage of legislation is among those powers, so that could mean that the chamber is temporarily incapacitated from undertaking most legislative business. However, because the powers of speaker *pro tempore* are so loosely defined—what does “necessary and appropriate” mean?—and do not clearly proscribe any types of actions an interim speaker might take, and because only the House has the power to say how it can govern itself under the Rules of Proceedings Clause, this risk is more of a mirage. As long as a majority tolerates whatever action the speaker *pro tempore* wants to take, the House can establish its own precedent and affirmatively endorse that action or at least acquiesce to it.¹⁸¹ Unlike the situation in a failure to initially elect a speaker, here, members are already sworn, committees are operative, and staff are paid. The ship has a crew and a first mate, just no captain. Government can continue if it needs to.

Another risk would be that the speaker *pro tempore*—who is chosen by the departing speaker and therefore likely a loyal ally¹⁸²—seeks to sabotage the chamber’s ability to cohere around the new majority. This risk, too, can be mitigated: resolutions to empower a new or different speaker *pro tempore* would be privileged, so a member of the frozen-out new majority could replace an obstructive interim speaker.¹⁸³

Meanwhile, changes in Senate control pose almost no issue. In fact, the Senate has changed hands mid-Congress multiple times since the year 2000. In the 117th Congress, control of the Senate flipped almost three weeks into the term when Senators Raphael Warnock and Jon Ossoff took their seats on

¹⁷⁹ See, e.g., Andrew Solender, Mike Johnson Critic Taken Off Powerful Rules Committee, Axios (Jan. 14, 2025), <https://www.axios.com/2025/01/14/mike-johnson-thomas-massie-rules-committee>.

¹⁸⁰ See Rules of the House of Representatives, R.VIII (8)(b)(3), H.R. Doc. No. 118-187, at 369 (2025).

¹⁸¹ See Kayla Guo, What Can Patrick McHenry, the Interim Speaker, Do?, N.Y. Times (Oct. 4, 2023); Walker, *supra* note 176; Andrew Solender, Justin Green & Juliegrace Brufke, House May Vote on Empowering Interim Speaker McHenry, Axios (Oct. 18, 2023), <https://www.axios.com/2023/10/18/house-dave-joyce-patrick-mchenry-speaker>.

¹⁸² See House Rule I, cl. 8(b)(3)(B).

¹⁸³ See, e.g., Niels Lesniewski, House Members Discuss Lifting Limits on Speaker Pro Tem Power, Roll Call (Oct. 12, 2023, at 16:10 ET), <https://rollcall.com/2023/10/12/house-members-discuss-lifting-limits-on-speaker-pro-tem-power/>.

January 20, 2021.¹⁸⁴ And all within the span of the 107th Congress, from 2001–2002, control of the Senate changed from the Democrats, to the Republicans, to the Democrats again, and back to the Republicans.¹⁸⁵ When control changes, the new majority leader is recognized as such automatically. Then, the Senate must pass a new organizing resolution to effect the necessary changes in committee chairmanships and assignments.¹⁸⁶ Reorganizing resolutions are privileged, mitigating the risk of obstruction.¹⁸⁷

CONCLUSION

Congress remains equipped for multi-party governance, but only when those parties coalesce into a majority faction to act as a “majority party” for the purposes of the rules and chamber organization. This Note argues that the House is better equipped for pluralism because of opportunities to place third parties in positions of agenda-setting power on the Rules Committee, whereas the Senate’s relative inflexibility to pluralism results from its total reliance on the majority leader and minority leader.

Even though third parties might benefit from certain legislative tools in each chamber, such as the House’s discharge motion and the Senate’s unanimous consent agreements, it is a nonstarter for either chamber to rely on its ponderous default rules for scheduling legislation. Without organized majorities to structure governance and set its agenda, Congress would be incapacitated. Further, it would be technically unprecedented to elect either chamber’s constitutional officers on a plurality basis, at least without a majority ratification.

Parties and coalitions in a multi-party Congress must prepare to craft majorities accordingly by adapting their organizing timeline to compensate for the longer time required for RCV results to come in. Unlike the 1855 anti-Nebraska coalition, they must negotiate their power structure early, in advance of the Congress, so that the speaker election is resolved quickly. As a backup, the House should explore alternative arrangements for the swearing in of new members, such as amending 2 U.S.C. § 25; deeming it

¹⁸⁴ See Peoples et al., *supra* note 150.

¹⁸⁵ See Party Division, U.S. Senate, https://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm (last visited May 28, 2025).

¹⁸⁶ See, e.g., Marianne Levine, Schumer and McConnell Agree to Organizing Resolution for 50-50 Senate, *Politico* (Feb. 3, 2021, at 20:44 ET) <https://www.politico.com/news/2021/02/03/schumer-and-mcconnell-agree-to-organizing-resolution-for-50-50-senate-465444>.

¹⁸⁷ See Riddick’s Precedents, *supra* note 69, at 1034–35.

unconstitutional and substituting in a new rule to follow instead;¹⁸⁸ unilaterally overriding the statute by passing a new superseding rule;¹⁸⁹ or evading the problem by electing an interim speaker *pro tempore*. The Senate, meanwhile, may proceed without an officially elected president *pro tempore*, and its operations are less vulnerable to dynamic changes in control. But it must ensure it has the capacity to confirm a new president's cabinet nominees quickly for the sake of national security and continuity of government.

A majority coalition would be best able to access and utilize the privileges assigned to the "majority party" in congressional rules and parliamentary precedents. Most importantly, however, a majority can always change its chamber's rules. Once in place, a majority multi-party coalition could revise Congress's features and set new precedents to reflect multi-partisan arrangements. But until then, Congress's existing legal structure is equipped to handle multi-party coalition governance.

¹⁸⁸ See note 167 and accompanying text.

¹⁸⁹ Cf. *supra* note 35 and accompanying text (explaining why the Constitution might permit a chamber to unilaterally ignore "statutized rules" regarding cameral proceedings).