

GUEST ESSAY

A Failed Speaker Vote for Kevin McCarthy Would Be a Historic Event

Jan. 2, 2023 5 MIN READ

By Brendan Buck

Mr. Buck worked for the past two Republican speakers of the House.

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Opening day in the House of Representatives is typically marked by the usual pageantry and the fleeting promise that this Congress will work better than the last. That hope could be immediately dashed this year if the House fails to elect a speaker on the first ballot and descends into a floor fight unprecedented in modern times.

A small band of Republican misfits has vowed to vote against Kevin McCarthy, the party's nominee for speaker. With a razor-thin majority, just five Republicans voting against him could deny Mr. McCarthy the gavel. This would be no small event. The House last failed to elect a speaker on the first ballot in 1923, and it's only happened once since the Civil War.

Electing a speaker is a responsibility given the House by the Constitution. Allowing the process to unravel into chaos would diminish the entire body and destroy Americans' confidence in the new Congress. Mr. McCarthy still has time to reach an agreement with his critics, and he should do all within reason to secure the speakership on the first vote. Otherwise, a self-serving power play by a small group of Republicans threatens to make a mockery of the institution and further cement the notion that the party is not prepared to lead.

A failed vote would badly weaken Mr. McCarthy or whoever the new speaker will be. The House is a majoritarian institution, and a speaker's power is ultimately derived from the ability to produce the 218 minimum votes needed to do business. If Republicans are unable to muster the votes for a speaker, it will make very clear from the outset they cannot be counted on to fulfill the body's basic responsibilities, such as funding the government and preventing a credit default by lifting the debt ceiling, both of which will be required this year.

Should Mr. McCarthy come up short on the first ballot, it could take several more votes — and days — until we have a new speaker. But no matter who emerges as the top House Republican, the prolonged spectacle would leave the Republican majority hopelessly damaged from the start, along with the institution of the House itself.

The Constitution requires that the House elect a speaker, and the vote takes priority over all other business. Nothing else can be done until the question is resolved. The House votes on a speaker before it formally adopts the set of rules governing the body. The incoming members of Congress won't even be sworn in until after they choose a speaker.

Without House rules in place, the body operates on precedent and basic parliamentary procedure. The precedent holds that a person must have a majority of those present and voting to be elected speaker. Those absent or voting “present” are not counted in the total and thus can lower the number needed to win a majority. Even when things run smoothly, it is a time-consuming process. Over more than an hour, all 435 members are called alphabetically, and each shouts the name of his or her choice.

While members are not bound to vote for a nominated person — or even for a member of the House, for that matter — the Congressional Research Service found that from 1945 to 1995, no members voted for anyone other than their party’s nominee. However, as our politics has become more fractured, a smattering of members have protested the party’s nominee by voting for someone else.

None of these recent protest votes have derailed the election of a speaker, however. But a failed vote on Tuesday would bring the House into a state of uncertainty that no members have seen in their lifetimes.

The House cannot function until a speaker is elected and sworn in. Thus the immediate order of business would be to simply vote again. The last time the first vote failed, 100 years ago, it required nine ballots over three days to name a speaker. In 1856, the speakership wasn’t resolved until the 133rd ballot.

After a failed vote, the procedural options for both Mr. McCarthy and his detractors would be quite limited. Before another roll call vote, the House may entertain nominating speeches, whereby any member can rise and speak in favor of a candidate. While nominations are typically brief, this process may present an opportunity for Mr. McCarthy’s allies to make the case for his speakership. Lengthy nominating speeches could also be used to buy time while members work to reach an agreement in real time on the House floor. But the process could also unleash a circus on the floor, with Republican detractors using the opportunity to question Mr. McCarthy’s fitness for the job.

Lawmakers could decide to change the process whereby a speaker is elected. Twice the House has voted to allow a speaker to be elected by a plurality rather than a majority vote. Both instances predated the Civil War and came only after weeks or, as in 1856, months of deadlock.

The House could also move to adjourn, whether to a date or a certain time. Republicans may want to stop the voting to hold a meeting and attempt to resolve the matter privately. But like everything in the House, adjourning requires a majority, which could prove difficult. House Democrats are unlikely to want to aid Mr. McCarthy, while those Republicans blocking him may not want the balloting to stop.

In the event of a stalemate, Mr. McCarthy could face an important strategic question: Keep members on the floor voting while he seeks to cut a deal or invite an even more unpredictable closed-door meeting of his conference? He may find that the best way out is through — by continuing to vote in a test of wills with people who are defying the choice of their conference.

In the House, if you have a majority of the votes, you can do anything you want. If you don’t, you can’t do much of anything. It is easy to imagine several rounds of voting taking place in succession before someone wins or members relent and adjourn.

Mr. McCarthy won an overwhelming vote within the House Republican conference to be the next speaker. Those opposing him know they are badly outnumbered, but they simply don’t care. Representative Andy Biggs has offered himself as a token opposition candidate. Though he has been fund-raising aggressively off his bid, Mr. Biggs has no chance to become speaker; if Mr. McCarthy fails, it will be a different Republican who takes the gavel. But the agitators’ objective isn’t to win the speakership for one of their own; it is to weaken Mr. McCarthy or whoever emerges as the next speaker of the House. The embarrassment indeed may be the point.

The dissident members believe a weak speaker would make them more powerful. In truth, it would benefit no one.

Brendan Buck is a communications consultant who previously worked for the Republican speakers of the House Paul D. Ryan and John Boehner.

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