



COMMON QUESTIONS ABOUT REMOTE VOTING BY PROXY

PREPARED BY THE MAJORITY STAFF

Q: Will remote voting by proxy be a permanent change to the House rules? Would we continue to use it post-pandemic?

No. We would temporarily implement remote voting by proxy for measures responding to the COVID-19 pandemic through a special order resolution that would allow the Speaker to put the process in place for 60 days during a pandemic emergency. The authority could be renewed for additional 60-day periods as needed, though not past the 116th Congress. Chairman McGovern recommends that Congress look at putting a process in place for future pandemics or disasters; however, he strongly believes this should not become common practice for regular business.

Q: Can Congress modify this process later, improve upon it, or get rid of it altogether?

A: Yes. The process could not be extended past the end of this Congress without further action.

Q: Can implement remote voting by proxy be implemented without House action?

A: No. This will require an adoption of a special order resolution. The Rules Committee report on remote voting highlights several House rules that would need to be addressed to accommodate any type of remote voting, including provisions in rules I, III, XIII, XV, XVIII, and XX. This resolution could be adopted by unanimous consent or by voice vote, but the House cannot vote remotely by proxy without action.

Q. Can Members vote remotely by proxy immediately after the House adopts this resolution?

A: No. The resolution and accompanying regulations lay out what must occur to trigger this system, including the Sergeant-at-Arms notifying the Speaker of an ongoing pandemic emergency and a 24-hour notice period before final passage votes so that Members may secure proxies. These important steps cannot be completed on the same day the House adopts the resolution.

Q: How will Members select a proxy?

A: It will be up to a Member to determine who their proxy would be and how they would like the proxy to vote. However, the Rules Committee will coordinate with the Democratic Whip's office and the rest of Democratic Leadership to ensure that Members receive guidance and assistance navigating the process of securing a proxy. Chairman McGovern hopes that Republican colleagues will do the same.

Q: What does the process look like to designate a proxy?

A: To vote remotely by proxy, a Member must submit a signed letter to the Clerk authorizing another Member to vote on their behalf and directing them how to vote on the noticed legislation. The letter could be emailed. There would be sufficient notice before any final passage votes to ensure they have time to do so. If there are changes to the bill text or additional unscheduled votes such as a motion to adjourn, a Member must send written instruction (including email) to the previously authorized proxy once they are informed of the vote. Detailed instructions will be sent to every Member outlining this process.

Q: Can a Member revoke or change their proxy?

A: Yes. Members can revoke their proxy with a subsequent letter to the Clerk or by simply showing up to vote, and can change their proxy with a letter to the Clerk.

Q: What happens if there are unexpected votes or votes for which text wasn't available, such as an MTR?

A: The House would hold the vote open for an announced period of time to allow time to send voting instruction to a proxy.

Q: How will votes be taken?

A: Votes may be taken in two ways:

- By roll call, with the Members serving as proxies answering "yes by proxy" or "no by proxy" when the names of Members voting remotely are called.
- By electronic device, with the Members serving as proxies using well cards and writing "yes by proxy" or "no by proxy", and with votes announced as the cards are filled out and turned in by proxies so Members can watch in real time to ensure a vote was cast properly.

Either way, without exact direction from the Member, a proxy cannot cast a vote on a Members' behalf.

Q: How will floor debate work?

A: Floor debate would work as normal and would depend on how the bill is being considered (e.g. by unanimous consent, under suspension, or under a rule). Deliberation would occur in the chamber. If Members have a statement on a bill but aren't physically present, they can put remarks in the record under general leave using the new electronic system established with the Clerk's office.

Q: With remote voting by proxy, would a quorum of Members need to be present in the Chamber for the vote?

A: Members voting by proxy would count toward a quorum.

Q: Will Delegates be able to vote using this new system?

A: The same House rules that apply under current practice with respect to Delegate voting will apply in any remote voting system.

Q: How will votes appear if a Member votes remotely by proxy?

A: Votes would appear as normal in the vote tally, and a list of Members who took those votes by proxy will appear following the list of yeas and nays in the Congressional Record.

Q: What if the proxy misses the vote when the Member's name is called?

A: If a Member agrees to serve as a proxy, it is their duty to appear for votes. Members are responsible for watching the floor proceedings and ensuring their proxy voted correctly on their behalf. If a proxy appears to be missing the vote, Members must alert floor staff as soon as possible and before the vote closes.

Q: Is remote voting by proxy constitutional?

A: Yes. Many legal scholars point to both the Constitution's explicit language giving the House and Senate the ability to make their own rules (Art. I, Sec. 5, Cl. 2), as well as two Supreme Court cases from the 1890s, as grounds to believe that Congress has the ability to establish remote voting by proxy rules.

In *United States v. Ballin*, 144 U.S. 1 (1892), the Supreme Court found that, while the Constitution requires the presence of a majority – or quorum – of the House to do business, the Constitution also leaves it to the House to determine its own rules. In *Field v. Clark*, 143 U.S. 649 (1892), the Court ruled that challenges to the internal operation of Congress are not justiciable in the federal courts.

Put simply, as Erwin Chemerinsky, renowned constitutional scholar and Dean of the University of California, Berkeley School of Law, has written, “[t]he Constitution bestows on each House of Congress broad discretion to determine the rules for its own proceedings... This authority is expansive and would include the ability to adopt a rule to permit proxy voting. Nothing in the Constitution specifies otherwise.” Given this analysis, remote voting by proxy will withstand constitutional scrutiny.

Q: Should Congress wait to implement this new process? It took Congress three years to make changes to the rules after the tragic events of 9/11.

A: After 9/11, the Rules Committee spearheaded a years-long process (from 2002-2005) to improve the continuity of Congress. That effort led to the adoption of several changes to the standing rules of the House.

A key difference here is that we are still in the midst of the crisis. Inaction is not an option.

Another key difference is that this is not a permanent change to the rules of the House. This will be a temporary special order that expires at the end of a 60-day period. While it may be renewed if necessary, it cannot be extended past the end of this Congress. It is a modest change in the context of the historic emergency we face. We must act swiftly to ensure that Congress is able to safely and effectively work. While this temporary rule change is in effect, the Rules Committee will continue to study alternative options and take advice and input from all Members.

Virtual Committee Proceedings:

Q: Is this a permanent change?

A: No. This authority is temporary and lasts for the duration of a 60-day period during a pandemic emergency, which can be renewed.

Q: What platform will committees use to conduct remote proceedings?

A: The resolution does not specify technology that must be used. Those choices will be made by individual committees in consultation with the Committee on House Administration on the cybersecurity of platforms.

Q: Can committees operate completely remotely?

A: Yes. Under this resolution, committees can hold hearings, markups, and other business meetings with every Member participating from a separate location.

Q: Can committees choose not to operate remotely?

A: Any committee conducting proceedings must ensure the ability of members to participate remotely, to the greatest extent practicable.

Q: Is this authority limited to committee action on COVID-related measures?

A: No. To ensure committees are able to continue their essential oversight and legislative functions, the authority is not limited to specific measures; however, it is only in effect for the duration of the pandemic emergency, when Members may not be able to physically attend proceedings.