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Voting and Quorum Procedures in the House of Representatives

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Voting and Quorum Procedures in the House of Representatives

Summary

The Constitution requires that a quorum, or a simple majority of the Members, is to be present on the floor when the House of Representatives transacts business. However, the House conducts much of its legislative business in Committee of the Whole where this constitutional requirement does not apply. Also, the House always presumes that a quorum is present unless and until its absence is demonstrated conclusively.

The rules of the House severely limit the occasions on which a Representative may make a point of order that a quorum is not present, either in the House or in Committee of the Whole. In current practice, Members usually make such a point of order only when a vote is taking place. If a majority of the Members fail to respond to a quorum call or participate in an electronically recorded vote conducted in the House, the House must adjourn or take steps necessary to secure the attendance of enough Members to constitute a quorum.

Each question to be decided on the floor is first put to a voice vote. Before the final result of that vote is announced, any Member may demand a division vote or seek an electronically recorded vote. During a division vote, the Members favoring the question, and then those opposing it, stand and are counted. During a vote using the House's electronic voting system, Members have at least 15 minutes to come to the floor and cast their votes.

In the House, if the Speaker sustains a point of order against a voice or division vote on the grounds that a quorum was not present, an electronic vote takes place automatically to decide the question and establish the presence of a quorum. If a quorum is present, 1/5 of those Members can secure an electronic vote in the House by invoking their constitutional right to demand "the yeas and nays."

In Committee of the Whole, 25 Members can secure an electronic vote on the pending amendment or motion. If a quorum is not present in Committee of the Whole, a Member first can require that a quorum call take place before the chair counts to determine if there is sufficient support to order an electronically recorded vote.

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Voting and Quorum Procedures in the House of Representatives

Introduction

The rules and practices of the House of Representatives governing quorums and voting on the floor are closely intertwined, and derive from two provisions of Article I of the Constitution. Regarding quorums, clause 1 of Section 5 states in part that “a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.” Regarding voting, clause 3 of the same section provides in part that “the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.”

This report discusses how the House now interprets and implements these two constitutional provisions. It focuses on the most important rules and the most common practices; it does not attempt to cover all the precedents the House has established or all the procedures that may be invoked—for example, the procedures for calling the roll instead of using the electronic voting system to decide a question or establish the presence of a quorum. This report also assumes a familiarity with some other aspects of the House’s floor procedures.

The Quorum Requirement in Theory and Practice

The Constitution’s quorum requirement quoted above seems to make it necessary for a simple majority of the House’s members, or a minimum of 218 Representatives if there are no vacancies in the House, to be present on the floor whenever the House conducts business. As any observer of the House soon notices, however, sometimes only a handful of Members are present during House debates.¹ In fact, it is rather unusual for as many as 218 Members to be present on the floor at the same time unless a vote or quorum call is being conducted using the House’s electronic voting system. There appears to be an inconsistency, therefore, between

¹References in this report to “Members” do not include Delegates and the Resident Commissioner. During the 103rd Congress, the House’s rules permitted them to vote in Committee of the Whole, “subject to immediate reconsideration in the House of questions resolved in the Committee of the Whole by a margin within which the votes of Delegates and the Resident Commissioner were decisive.” That rule was repealed at the beginning of the 105th Congress.

an apparently unambiguous constitutional requirement and the well-established and well-accepted practices of the House. How is this inconsistency to be explained?

First, the House transacts much of its business on the floor by resolving itself into the Committee of the Whole—formally, the Committee of the Whole House on the State of the Union. The primary reason for doing so is that the rules governing debate and amendments in Committee of the Whole are more flexible than those that apply when the House is meeting “in the House.” Resolving into Committee of the Whole also is convenient for another reason. The Committee of the Whole is a committee that the House has created in its rules, just as the House has created various standing committees. Although the Committee of the Whole differs from other House committees in that all Representatives are members of it and it meets on the House floor, it still remains a committee of the House. Therefore, a meeting of the Committee of the Whole is not a meeting of the House itself, so the constitutional quorum requirement for the House does not apply in Committee of the Whole. Instead, the House is free to set in its rules whatever quorum requirement it chooses for meetings of the Committee of the Whole. Clause 6(a) of House Rule XVIII provides that “[a] quorum of a Committee of the Whole House on the state of the Union is 100 Members,” not the 218 Members who constitute a quorum of the House.²

Second, whether the House is meeting as the House or in Committee of the Whole, a quorum always is presumed to be present unless and until its absence is demonstrated. Reasonably enough, the House presumes that it is complying with the Constitution or its own rules, as the case may be. Furthermore, neither the Speaker nor the chairman of the Committee of the Whole is empowered to take the initiative to ensure that this presumption is correct. At no time may the Speaker or the chairman interrupt the proceedings on the floor because he or she observes that the necessary quorum is not present, or because he or she decides to count those present to determine whether the applicable quorum requirement is being met. Instead, the Speaker or chairman responds to an assertion that a Member makes from the floor that a quorum is not present (or less often, when a Member is recognized to move a call of the House).

A quorum always is presumed to be present unless a Member challenges this presumption from the floor, and the House’s standing rules severely limit when he or she may do so. Many of the details of these rules are discussed later in this report. To summarize them here, there is a critical linkage between the House’s quorum and voting procedures: about the only times that a Member has a right to make a point of order that a quorum is not present is when a vote is taking place. In a sense, the House in its rules has adopted a definition of “business,” for purposes of the constitutional quorum requirement, that is limited to voting.³ If a majority of all

²This rule first was adopted in 1890. Before then, the quorum requirement in Committee of the Whole was the same as in the House.

³As the House’s parliamentarian has observed, “[b]usiness’ is a term of art which does not encompass all parliamentary proceedings....” *Deschler’s Precedents of the U.S. House of Representatives*. H.Doc. 94-661. 94th Congress, 2nd Session (hereafter *Deschler’s*) (continued...)

Representatives actually had to be in the chamber from the opening gavel to the adjournment of each daily session, it would become practically impossible for Members to satisfy all their various responsibilities and for the House to do its work in a timely fashion.

Conducting Voice and Division Votes

Either the Constitution or the House's rules require that certain kinds of questions be decided by record votes that are almost always conducted by use of the House's electronic voting system.

First, the Constitution mandates that any vote to override a presidential veto "shall be determined by Yeas and Nays" (Article I, Section 7, clause 2). Second, under clause 10 of Rule XX, adopted in 1995 at the beginning of the 104th Congress, "[t]he yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon." And third, clause 12(a)(2) of Rule XXII provides for a record vote on any motion to authorize House managers to close the meetings of any conference committee.

In all other cases, the basic procedures for voting in the House are laid out in House Rules I and XX. The manner in which questions are put to a vote is governed by clause 6 of Rule I, on the duties of the Speaker:⁴

The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: "Those in favor (of the question), say 'Aye.'"; and after the affirmative voice is expressed, "Those opposed, say 'No.'". After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Clause 1 of Rule XX then lays out the basic procedures for securing division and record votes:

- (a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise from their seats to be counted, and then those opposed.

³(...continued)

Precedents), v. 5, p. 544.

⁴For the early parliamentary law on which many of the House's voting procedures continue to rest, see Sec. XLI of Jefferson's Manual, reprinted in *House Rules and Manual*, compiled and written in the Office of the Parliamentarian and published during the first session of each Congress. The full title of the volume is *Constitution, Jefferson's Manual, and Rules of the House of Representatives*. The 106th Congress edition is House Document No. 105-358.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

(c) In case of a tie vote, a question shall be lost.

Whether in the House or in Committee of the Whole, every question, except the few noted above, is first put to a voice vote.⁵ The chair instructs those who favor the question to call out “aye,” and then those who oppose it to call out “no.” The chair then is expected to state that, in his or her opinion, “[t]he ayes [or the noes] appear to have it,” and to pause before banging the gavel and announcing that “[t]he ayes [or noes] do have it and the bill is [or is not] passed” (or the motion is agreed to, or whatever the case may be).

If no one challenges the chair’s statement before the gavel comes down, his or her announcement is conclusive and the question is decided. Furthermore, the vote is considered valid even if only a few Members actually voted. A quorum is presumed to have been present, regardless of how many actually may have participated in the voice vote.⁶ For example, “[t]he fact that a quorum does not vote on an amendment does not necessarily indicate that a quorum is not present.”⁷

After the chair announces his or her opinion as to the outcome of a voice vote, any Member has a right to demand a division vote. In addition, the chair may call for a division vote when a voice vote leaves him or her in doubt, though the chair rarely does so in practice. When a division vote is demanded, the chair directs all those in favor of the question to stand and to remain standing until he or she counts them; then in like manner, the Chair counts those who stand in opposition to the question.

⁵Clause 12 of Rule XVIII states that “[t]he Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.” So the basic voting procedures of the House are followed in Committee of the Whole except where the House’s rules provide otherwise.

⁶This presumption is reflected in clause 4(b) of Rule XX which states that, “[o]n the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.” This clause derives from the so-called “Reed Rules” of 1890, named after Speaker Thomas Brackett Reed (R, ME), who was responding to the dilatory tactic of the “disappearing quorum” by which Members who were present on the floor would decline to vote, and so prevent the House from continuing to conduct business. In a dramatic and highly contentious development, Reed named Members who were present but who had not voted on the pending question, and he directed the Clerk to record their names for purposes of establishing the presence of a quorum. Although Reed’s opponents at the time decried his action as revolutionary, it eventually was embodied permanently in the House’s standing rules.

⁷*Deschler’s Precedents*, v. 5, p. 319.

The Chair then announces the result and the question is decided.⁸ As is true of a voice vote, the positions of individual Members in a division vote are not recorded, and a division vote is valid even if less than a quorum was present to participate in it, unless the vote is challenged for that reason. Again, the presumption is that a quorum is present on the floor when the vote takes place even if not all of those Members choose to take part in the vote.⁹

Both voice votes and division votes involve only the Members who happen to be on or very near the floor at the time a vote takes place. No time is provided for Members to come to the floor from their offices or committee rooms. As a result, a small number of Members can determine the outcome of either kind of vote, and that outcome may not be the same as it would be if most or all Members participated. Before the final result of either a voice vote or a division vote is announced, therefore, any Member may request a record vote using the House's electronic voting system.¹⁰ During this kind of vote, Members usually have 15 minutes or more (typically 17 minutes in current practice) to come to the floor and record their votes, and the vote of each Member is recorded individually and printed in the *Congressional Record*.

Seeking an Electronic Vote

The House uses its electronic voting system for taking what actually are several different kinds of votes. They are indistinguishable from each other in how they are conducted, but not in how they are ordered.

In the House

There are three ways to secure an electronic vote in the House. According to the parliamentarian:¹¹

⁸Whenever the Chair counts—to determine the outcome of a division vote, to ascertain whether a quorum is present, or to discover if there is sufficient support to order an electronic vote—Members may not challenge the accuracy of the count. “One of the suppositions on which parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division and the integrity of the Chair in counting a vote should not be questioned in the House, and the Chair’s count of Members demanding a recorded vote is not appealable.” (Citations omitted.) *House Rules and Manual*, notes accompanying clause 1 of Rule XX.

⁹In his notes following clause 1(b) of Rule XX, the parliamentarian observes that “[a] vote by division takes no cognizance of Members present but not voting, and consequently the number of votes counted by division has no tendency to establish a lack of a quorum....” *House Rules and Manual*.

¹⁰Even after the final result is announced, the chair often will allow a Member to seek an electronic vote if that Member was on his or her feet and trying to get the chair’s attention for that purpose before the final result is announced.

¹¹*Procedure in the U.S. House of Representatives*, 4th edition, 97th Congress. Washington: U.S. Government Printing Office, 1982 (hereafter *Procedure in the House*), p. 689.

On any vote in the House, (1) the vote may be objected to (for lack of a quorum) under Rule XV clause 4 [now clause 6 of Rule XX], thereby precipitating an automatic ordering of the yeas-and-nays; (2) a recorded vote may be ordered by one-fifth of a quorum; or (3) the yeas and nays may be ordered by one-fifth of those present....

Recall that the Constitution provides that “the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.” A vote by the yeas and nays is what traditionally has been called a rollcall vote, though today it is also known as a kind of record vote and is taken by use of the House’s electronic voting system unless that system were to break down. In that case, the clerk of the House actually would call the roll of Members, following clause 3 of Rule XX, as was done before the electronic system was installed to implement the Legislative Reorganization Act of 1970. Clause 2(a) of Rule XX now provides that all record votes and quorum calls in the House are to be conducted electronically unless the Speaker exercises his discretion to have the clerk call the names of Members instead. In practice, the electronic voting system always is used unless it is temporarily inoperative.¹² (For this reason, all references in this report to rollcall and record votes should be understood to be references to votes taken “by electronic device.”)

As noted earlier, there is an important linkage between the House’s quorum requirements and its procedures for ordering electronic votes. In the House, a yeas-and-nays vote can be ordered, as a matter of constitutional right, by 1/5 of the Members present, but this number need not constitute a quorum.¹³ One-fifth of however many Members happen to be present may order the yeas and nays. However, there is an alternative that is even less demanding. Any Member usually can compel an electronic vote on any question on which the House is voting by invoking clause 6(a) of Rule XX, which provides for an electronic vote that also establishes the presence of a quorum. That rule states in part:

When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)--

- (1) there shall be a call of the House;
- (2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; *and*
- (3) *the yeas and nays on the pending question shall at the same time be considered as ordered.* (Emphasis added.)

¹²The *House Rules and Manual* contains additional rules and precedents governing votes and quorum calls conducted by tellers (especially in clause 4(a) of Rule XX). These procedures are not discussed in this report because they are used very rarely in the contemporary House.

¹³“In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way.” *House Rules and Manual*, notes accompanying Article I, Section 5, clause 3 of the Constitution.. The change in practice can be traced back at least to 1863.

Clause 6(b) goes on to provide in part that:

If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

When the Speaker announces the result of a voice vote or a division vote in the House, a Member may take advantage of the rules just quoted by rising and saying:¹⁴

Mr. Speaker, I object to the vote on the ground that a quorum is not present and I make a point of order that a quorum is not present.

The Member making this statement is invoking the constitutional quorum requirement and challenging the validity of the voice or division vote by asserting that it does not comply with the Constitution because a quorum of the House was not present at the time.

In response, the Speaker counts to determine whether, in fact, 218 Members are present on the floor. If a quorum is present, he overrules the point of order. If the Representative still wants an electronically recorded vote, he or she may ask for the yeas and nays, and hope that 1/5 of the Members present rise to indicate their support for the request. Alternatively, the Member may ask for a recorded vote, invoking clause 1(b) of Rule XX which states that “[i]f a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device” unless the Speaker orders otherwise.

Notice that it takes 44 Members (1/5 of a quorum) to order a recorded vote under this rule, compared to 1/5 of those present to order the yeas-and-nays. When a quorum is present on the floor, it may be easier to obtain sufficient support for a recorded vote than for a yea-and-nay vote because the number of Members present probably will exceed the minimal quorum of 218 (in which case 1/5 of the number present will exceed 44). In either event, the vote will be taken by using the electronic voting system, regardless of whether it is technically a yea-and-nay vote or a record vote ordered under clause 1(b) of Rule XX.¹⁵

¹⁴“An objection to a vote on the ground that a quorum is not present under Rule XV clause 4 [now clause 6(a) of Rule XX], may not be made until after the question has been put by the Speaker.” Then “[a] Member must be on his feet and actively seeking recognition when the Chair announces the result of a vote in order to object to the vote on the grounds that a quorum is not present....The mere fact that a Member is on his feet does not constitute notice to the Chair that he is seeking recognition to make such an objection.” (Citations omitted.) *Procedure in the House*, p. 297.

¹⁵Requesting one form of electronic vote in the House does not preclude a request for the other. “A demand for a recorded vote may be made following a demand for the yeas and nays, providing the latter demand is first withdrawn [or does not receive a sufficient second].” *Procedure in the House*, p. 685.

If the Speaker discovers that a quorum is not present—which is more often the case—he announces that fact and also states that, under clause 6(a) of Rule XX, an electronic vote is ordered on the question before the House. This vote accomplishes two purposes at once. First, it decides the question—for example, will a bill pass? And second, at the same time it demonstrates the presence of a quorum as Members use the 15 or more minutes given them to come to the floor and vote. If a quorum participates in the vote, that establishes the presence of a quorum and the House can continue to transact business. (It is rarely necessary for the sergeant-at-arms to “bring in absent Members” because they usually want to be recorded on all electronic votes.)

More often than not, there are fewer than 218 Members present on the House floor. It usually is possible, therefore, for a single Representative to use the procedure just described to require an automatic record vote using the electronic voting system (which is equivalent in effect to a yea-and-nay vote) by invoking the Constitution’s quorum requirement. Only when a quorum actually is present at the time of a voice or division vote—for example, when Members have just come to the floor to cast another vote—must a Member have the support of at least 1/5 of the Members present or 1/5 of that quorum to secure a record vote on the same question.

In Committee of the Whole

The constitutional right to demand “the Yeas and Nays” applies to both the House and the Senate, but it does not extend to the Committee of the Whole. There is no constitutional right for 1/5 of the Members present to insist on a vote in Committee of the Whole by call of the roll or by use of the electronic voting system. In fact, before 1970, the votes of individual Members never were recorded on any question that was decided in Committee of the Whole, including all the votes on amendments to bills.

As part of the same 1970 Legislative Reorganization Act that authorized the electronic voting system, the House amended its rules to provide for recorded votes in Committee of the Whole. Especially with the installation of the new voting system, these votes became the functional equivalent of yea-and-nay votes in the House. However, the requirements and procedures for securing a record vote in Committee of the Whole are somewhat different from those used to obtain comparable votes in the House, even though all these votes almost always are conducted by use of the same electronic system.

Under clause 6(e) of House Rule XVIII, “[i]n the Committee of the Whole House on the state of the Union, , the Chairman shall order a recorded vote on a request supported by at least 25 Members.” So before the final result of a voice or division vote is announced, all a Member need do is rise and request a recorded vote if he or she is confident that at least 24 other Members will rise to support the request. If not, the Member may say:

Mr. Chairman, I request a recorded vote and, pending that, I make a point of order that a quorum is not present.

When the Member requests a recorded vote and, at the same time, makes a point of order that the House rule governing quorums in Committee of the Whole is being

violated, the chairman is required to act first on the point of order that a quorum is not present (sometimes called a point of no quorum). He or she counts to ascertain the presence of a quorum, which is 100 Members in Committee of the Whole. If a quorum is present, a recorded vote is ordered only if 25 Members have risen to support the request. If a quorum is not present, on the other hand, the chairman orders an immediate quorum call. Members then come to the floor to record their presence, giving the Representative who is seeking a recorded vote the chance to convince 24 or more allies to remain on the floor. When the quorum call is concluded and the presence of a quorum has been established, the chairman returns to the pending request for a recorded vote. Now, presumably, there are at least 25 Members standing to support this request; if so, a recorded vote is ordered.

In other words, a Member who requests a recorded vote in Committee of the Whole can insist on a quorum call, if a quorum is not actually present, in order to increase the chances that 24 others will be on the floor to support the request. If the Member does make the two-part statement quoted above and then observes that, even without a quorum being present, there are at least 24 other Members standing to support the request, he or she simply may withdraw the point of order before the chair states that a quorum is not present, because a quorum call is not necessary to achieve the Member's objective of securing a recorded vote. Once the chair announces the absence of a quorum, however, the point of order may not be withdrawn, even by unanimous consent.

The key difference is that, in the House, the quorum call and the electronically recorded vote are combined; the outcome of the automatic record vote demonstrates the presence of a quorum. In Committee of the Whole, on the other hand, there may be a quorum call that is soon followed by a recorded vote on the amendment or motion in question. The two are not combined. First, a Member may insist on a quorum call solely for the purpose of increasing his or her chances of obtaining a recorded vote. After the quorum call, the chairman ascertains if there is sufficient support for ordering a recorded vote. If there is, the vote takes place immediately, so only moments may intervene between the end of the quorum call and the beginning of the recorded vote.

Time Allowed for Electronic Votes and Quorum Calls

“Not Less than Fifteen Minutes”

When an electronic vote or quorum call is ordered, either in the House or in Committee of the Whole, Representatives usually have at least 15 minutes to reach the floor and vote or record their presence. Clause 2(a) of Rule XX so provides: “The minimum time for a record vote or quorum call by electronic device shall be 15 minutes.”

Note that 15 minutes is “the minimum time”; it is not a fixed or maximum time. In practice, the time allowed often is extended to allow as many Members as possible to be recorded. Although the Speaker or chairman may close a vote at any time after

the 15 minutes have elapsed, he or she usually will allow at least several more minutes for any Members who are *en route* to reach the floor. For this reason, electronic votes frequently have consumed 20 minutes or longer. To try to expedite the House's work, Members presiding now sometimes state that an electronic vote that is about to begin "will be a 17 minute vote," meaning that Members will be allowed only two minutes in addition to the 15 minutes provided by clause 2(a).

The discretion of the chair in deciding how long to leave a vote open after the 15-minute period has ended could be used to the advantage of the majority party. In the case of a very close vote, the Speaker or chairman may close the vote after 15 minutes as soon as his or her side enjoys a one-vote majority, especially when the outcome might be reversed if the vote were left open long enough for other Members to reach the floor. However, Speakers have announced that they would not close electronic votes when Members are in the chamber seeking to be recorded. Alternatively, the chair could leave a vote open for much more than 15 minutes if his or her side is losing a close vote, and more time is needed to reverse that outcome by persuading Members to change their votes or by waiting for more Members to arrive and vote.

During an electronic vote or quorum call, Members may change their votes or record their presence at any time before the chair announces the result. However, a Member's vote or presence may not be recorded thereafter. The House parliamentarian states that "[r]equests to correct the *Congressional Record* and the *Journal* on votes taken by electronic device are not entertained, it being the responsibility of each Member to utilize the safeguards of electronic system and to verify the proper recording of his vote." Also, "[f]ollowing the announcement of the result of a call of the House conducted by electronic device..., the Speaker declined to entertain requests by Members to record their presence."¹⁶ (Citations omitted.) If a Representative misses an electronic vote, he or she may announce from the floor how he or she would have voted and, by unanimous consent, have that statement inserted in the *Record* in proximity to the vote tally.

Reducing the Time to Five Minutes

Members may be allowed less than 15 minutes to vote by electronic device when one such vote follows immediately after another or when an electronically recorded vote immediately follows a quorum call. In such circumstances, Members do not need 15 minutes to participate in the second or subsequent vote because they already are on the floor.

Clause 9 of Rule XX identifies three situations in which the Speaker has the discretion to reduce the time for an electronic vote *in the House* from not less than 15 minutes to not less than five minutes:

1. if the vote on some matter immediately follows, without intervening business, a record vote on ordering the previous question on that matter;

¹⁶*Procedure in the House*, p. 678-679.

2. if the vote on an amendment reported from Committee of the Whole immediately follows a record vote on another such amendment; and
3. if the vote on passing or adopting a measure or conference report immediately follows, without intervening business, a record vote on a motion to recommit the measure or conference report.

In addition, the Speaker can reduce to no less than 5 minutes the time for voting on certain questions that he has postponed (as discussed in the next section of this report).

The Speaker announces in advance his intention to exercise this discretion in any of these circumstances. For example, he or she may announce that the vote on adopting a resolution will be a five-minute vote if the House agrees by record vote to order the previous question on the resolution. The Speaker states that the first electronic vote will be a 15-minute vote and the second one, if ordered, will be a five-minute vote. In this way, Members coming to the floor for the first vote are alerted to remain for the second.

There also are three circumstances in which the time for completing an electronic vote *in Committee of the Whole* may be reduced to a minimum of five minutes. All involve a vote occurring immediately after another vote or after a quorum call.

First, as discussed above, a Member may request a recorded vote in Committee of the Whole on an amendment and, pending that request, make a point of order that a quorum is not present. If the chair determines that a quorum is not present and orders a quorum call, he or she also may announce at that time that, if a recorded vote on the amendment is ordered after the completion of the 15-minute quorum call, the time for the vote itself will be reduced to five minutes (clause 6(b)(3) of Rule XVIII).

Second, if there are going to be votes in Committee of the Whole on two or more amendments, the chairman may announce that there will be at least 15 minutes for the first vote but at least five minutes for each of the succeeding votes, so long as no business or debate intervenes between each vote (clause 6(f) of Rule XVIII). Suppose, for example, that a substitute for a first degree amendment has been offered. The Committee of the Whole first will vote on the substitute and then on the first degree amendment as it may have been amended by the substitute. The chairman may state that there will be a 15-minute vote on the substitute, to be followed by a five-minute vote on the first degree amendment if no debate occurs and no other motions or amendments are offered between the two votes.

Third, clause 6(g) of Rule XVIII empowers the chairman of the Committee of the Whole to postpone record votes on separate amendments to a bill until later during consideration of the bill, and also to cluster the votes on those amendments—in other words, for the Committee to vote on the amendments, one right after the other.

In such cases, the chairman may reduce the time for the second and each subsequent vote to no less than five minutes.¹⁷

As noted above, clause 2(a) of Rule XX also provides not less than 15 minutes for Members to respond to quorum calls in the House, but this time may be reduced for quorum calls ordered in Committee of the Whole. The device is what is known informally as a “notice quorum.” Clause 6(c) of Rule XVIII gives the chairman the discretion to announce, before a quorum call begins, that he or she will declare that a quorum is constituted as soon as 100 Members have recorded their presence:

When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chairman may announce an intention to declare that a quorum is constituted at any time during the quorum call when he determines that a quorum has appeared. If the Chairman interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

However, a notice quorum cannot be followed by a five-minute recorded vote on an amendment. For this reason, notice quorums now are relatively uncommon because a quorum call in Committee of the Whole usually takes place in order to secure sufficient support for a recorded vote on an amendment. If the chairman designates the quorum call as a notice quorum, the time for voting on the amendment cannot be reduced from at least 15 minutes, except by unanimous consent.

Postponing and Clustering Votes

Finally, the time for Members to reach the floor and cast electronic votes in the House may be reduced to not less than five minutes when the Speaker exercises his authority under clause 8 of Rule XX to postpone and cluster certain votes. (This authority is in addition to the authority, discussed above, that Rule XVIII gives chairmen in Committee of the Whole to postpone and cluster votes on amendments.) Clause 8 of Rule XX gives the Speaker the discretion to defer votes on some questions when an electronic vote has been ordered or when a point of order has been made against a voice or division vote on the ground that a quorum was not present. The Speaker’s authority applies to votes on:

- (1) adopting a resolution or passing a bill,
- (2) agreeing to a conference report or a motion to instruct conferees after they have been appointed,
- (3) agreeing to a motion to recommit a bill considered on call of the Corrections Calendar,

¹⁷For several Congresses, the Rules Committee frequently included this authority in the special rules it reported for considering individual bills. The authority became part of the House’s standing rules when the House adopted H.Res. 5 on January 3, 2001, the first day of the 107th Congress.

- (4) ordering the previous question on any of the questions described in (1)- (3),
- (5) agreeing to an amendment to a bill considered on call of the Corrections Calendar,
- (6) agreeing to the Speaker's approval of the *Journal*, and
- (7) agreeing to a motion to suspend the rules.

When an electronic vote is ordered on any one of these questions, the Speaker may announce that he or she is postponing the vote to a time he or she designates later on the same legislative day, in case of a *Journal* vote, or within two legislative days, in case of any of the other votes. The vote or votes are postponed to a certain point in the legislative schedule (for example, after disposition of another bill that is scheduled for consideration). When the House reaches that point, Members vote on the questions in the order in which the votes on them had been postponed.¹⁸ The first of these votes must be a regular 15-minute vote; before it begins, however, the Speaker may announce that each of the succeeding votes will be five-minute votes if no business intervenes.

This authority is invoked most often when the House considers on the same day a series of motions to suspend the rules. If the Speaker were not able to postpone and cluster votes on these motions, there might be a series of electronic votes at no more than 40-minute intervals (the time allowed for debating each motion) on a Monday, when many Members are in the process of returning to Washington from their districts. The Speaker's authority under clause 8 allows him to schedule any such votes for later on Monday or to "roll them over" until Tuesday or Wednesday, when they take place back-to-back with only the first vote in the series consuming at least 15 minutes. In similar fashion, the Speaker can postpone and cluster electronic votes that are ordered on suspension motions on Tuesdays.

Securing Quorum Calls and Calls of the House

The key rule governing attempts to secure the presence of a majority of Representatives on the floor during a meeting of the House is clause 7 of Rule XX, which states:

- (a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.
- (b) Subject to subparagraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time.

¹⁸The Speaker may re-designate the time for voting so long as the vote takes place within the permissible period. If a vote was postponed after a point of order was sustained against a voice or division vote because a quorum was not present, the vote then is taken *de novo*—that is, the question again is put to a voice vote which may be followed by a division or electronic vote, depending on the will of the House at that time.

When a quorum is established pursuant to a call of the House, further proceedings under the call shall be considered as dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

Under subparagraph (a), a Member only has the right to invoke the constitutional quorum requirement when a vote is taking place. At that time, any Representative “may object to the vote on the ground that a quorum is not present and make a point of order that a quorum is not present.” At any other time, the equivalent of a quorum call may take place only at the discretion of the Speaker, when he or she recognizes a Member “to move a call of the House.”¹⁹ In the former case, the Speaker responds to the point of order by counting to determine whether a quorum is present. If it is, he overrules the point of order and no quorum call ensues; if it is not, he sustains the point of order and orders an automatic rollcall vote, taken by electronic device. In the latter case (subparagraph (b)), a Member makes a motion for a call of the House, prompting what is in effect a quorum call to secure the presence of Members, regardless of whether or not a quorum actually was present when it began.²⁰

Note that the purpose of a quorum call under subparagraph (a) or a call of the House under subparagraph (b) is to secure the presence of a quorum, not to require the attendance of all the Members of the House. Subparagraph (b) provides that, once a quorum responds to a call of the House, “further proceedings under the call”—which would be efforts by the sergeant-at-arms to secure the attendance of all the remaining Members—“shall be considered as dispensed with” unless the Speaker decides to entertain a motion either for that purpose. Similarly, clause 6(b) of Rule XX, quoted earlier, provides for the same “further proceedings” to be dispensed with after a quorum call pursuant to subparagraph (a).

The corresponding rule governing quorums and quorum calls in Committee of the Whole is clause 6 of Rule XVIII. It is this rule that (1) sets the quorum in Committee of the Whole at 100 Members, (2) authorizes notice quorum calls at the discretion of the chairman, and (3) provides for five-minute votes on amendments following regular quorum calls, again at the chairman’s discretion.²¹

¹⁹The adoption of this rule, which dates from 1977, effectively mooted earlier precedents supporting the right of the Speaker to decline to entertain a motion for a call of the House under the authority of Rule XVI, clause 1, that “[a] dilatory motion may not be entertained by the Speaker.” The adoption of this and related rules changes in the 1970s effectively ended the practice of Members repeatedly requiring quorum calls in order to delay transaction of business on the floor. For examples of such tactics, see *Deschler’s Precedents*, v. 5, ch. 20, *passim*.

²⁰Clause 7(c) of Rule XX, quoted above, is an exception to this generalization.

²¹The rule also provides that, if fewer than 100 Members respond to a quorum call, the Committee must rise “and the Chairman shall report the names of absentees to the House.” This is very unlikely to happen in the modern House.

In addition, the same rule controls when a Member may make a point of order in Committee of the Whole that a quorum is not present (calls of the House are not permitted in Committee of the Whole). In brief, the rule states that:

- ! the chairman need not permit a point of order of no quorum to be made during general debate, and
- ! once a quorum in Committee of the Whole has been established on any day, a point of order of no quorum may be made only when “the Chairman has put the pending proposition to a vote.”

In other words, no Member has a right to insist on the presence of a quorum during general debate. There is a right to make one point of order of no quorum if it is made during the amending process that follows general debate, but only (1) if there was no quorum call during general debate and (2) if this point of order is made before there has been a recorded vote on an amendment or motion during that day’s sitting. Once a quorum call or recorded vote has taken place in Committee of the Whole on any day, a Member has the right to make a point of order that a quorum is not present only when the Committee is in the process of voting.²² The parliamentarian has summarized the effect of Rule XVIII, clause 6:²³

to permit a point of no quorum in a Committee of the Whole (other than when the Chair is putting the pending question) only once on a legislative day on each bill considered therein....Under this rule, where a quorum has been once established in the Committee of the Whole, the Chair may not entertain a point of order of no quorum on that day during the consideration of the same bill unless the Chair has put the pending motion or proposition to a vote. (Citations omitted.)

In the Absence of a Quorum

In the unlikely event that a majority of the House fails either to respond to a quorum call or to participate in an electronic vote, the House’s failure to comply with the constitutional quorum requirement is demonstrated.²⁴ Consequently, the House cannot resume legislative business until the presence of a quorum is recorded. The House has only two options: one is to adjourn; the other is to take steps necessary

²²The House may resolve into Committee of the Whole more than once on the same day, each time to consider a different measure. If so, the provisions of this rule apply separately to the consideration of each measure. “The Chairman of the Committee of the Whole must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending (and the fact that a quorum of the Committee has previously been established on another bill on that day is irrelevant during consideration....)” *House Rules and Manual*, notes accompanying clause 6 of Rule XVIII.

²³*Procedure in the House*, p. 296.

²⁴“Although it is not the duty of the Chair to take cognizance of the absence of a quorum unless disclosed by a vote or questioned by a point of no quorum, failure of a quorum to vote on a roll call cannot be ignored; the Chair must announce that fact although it was not objected to from the floor.” *Deschler’s Precedents*, v. 5, p. 295.

to secure the attendance of a quorum. In most cases, the House can be expected to adopt the second of these options by invoking clause 5 of Rule XX.

This clause provides in part that, “[i]n the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.” In this instance, the House can act without a quorum being present because the constitutional provision quoted at the beginning of this report authorizes it to do so. That provision states that, in the absence of a quorum, “a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.”

The situation and options in Committee of the Whole are comparable. “Where the Chair has announced the absence of a quorum in Committee of the Whole, no further business may be conducted until a quorum is established or the Committee rises....”²⁵ For much the same reason that the Constitution authorizes the House to adjourn without a quorum being present, clause 6(d) of House Rule XVIII states that “[a] quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a motion that the Committee rise.” However, a quorum is necessary to adopt a motion that the Committee rise and report a measure for final passage in the House.

Individual Votes and Extraordinary Majorities

The Right and Responsibility to Vote

In general, every Representative is expected to vote on every question, but House rules make an exception for the Speaker. Under clause 7 of Rule I, the Speaker “is not required to vote in ordinary legislative proceedings, except when his vote would be decisive or when the House is engaged in voting by ballot....” Although this rule does not prevent Speakers from voting, they usually do not.

Every other Member “shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question” (Rule III, clause 1). Each Representative is expected to apply this clause to himself or herself. The House parliamentarian observes that “[i]t has been found impracticable to enforce the provision requiring every Member to vote.”²⁶ Also, in recent practice, “the Speaker has held that the Member himself and not the Chair should determine” whether a Representative has “a direct personal or pecuniary interest” in the outcome of a vote; “the Speaker has denied his own power to deprive a Member of the constitutional right to vote.”²⁷ Furthermore, the Speaker “will not rule on a point of order challenging the personal or pecuniary interests of Members in a pending question, but

²⁵*Procedure in the House*, p. 273.

²⁶*House Rules and Manual*, notes accompanying clause 1 of Rule III.

²⁷*Ibid.*

will defer to the judgment of each Member as to the directness of his interest.”²⁸ In the same vein, clause 10 of Rule XXIV, the Code of Official Conduct, states that a Member who has been convicted of a crime for which he or she may be sentenced to two years or more in prison “should refrain” from voting in the House or in Committee of the Whole.

Voting is an individual right and responsibility that cannot be delegated or exercised by anyone else. In response to concerns about the possibility of “ghost voting,” in which a Member would be recorded as having voted even when there was evidence that he or she could not have done so, the House voted in 1981 to add what is now clause 2 of Rule III:

(a) A Member may not authorize any other person to cast his vote or record his presence in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member’s vote or record a Member’s presence in the House or the Committee of the Whole House on the state of the Union.

Simple and Extraordinary Majorities

All questions are to be decided on the House floor by simple majority vote unless some constitutional provision or House rule provides otherwise. A simple majority vote is defined as at least one-half-plus-one of the Members voting, provided that a quorum is present; clause 1(c) of Rule XX provides that “[i]n case of a tie vote, a question shall be lost.”

The Constitution requires a two-thirds vote of the Members present and voting for various purposes:

- ! to expel a Member
- ! to override a presidential veto
- ! to propose a constitutional amendment
- ! to remove political disabilities (now obsolete)
- ! to determine that a President remains disabled

In addition, for other purposes House rules require the support of either two-thirds or three-fifths of the Members voting:

- ! 2/3: to agree to a motion to suspend the rules (clause 1(a) of Rule XV)
- ! 2/3: to agree to a motion to dispense with the call of the Private Calendar (clause 5(a) of Rule XV)
- ! 2/3: to consider a special rule on the same day the Rules Committee reports it (clause 6(a) of Rule XIII)

²⁸*Procedure in the House*, p. 680.

- ! 2/3: to agree to a motion to dispense with Calendar Wednesday (clause 7(a) of Rule XV), or to agree to a special rule for the same purpose (clause 6(c) of Rule XIII)
- ! 3/5: to pass a bill called from the Corrections Calendar (clause 6(c) of Rule XV)
- ! 3/5: to approve a measure, amendment or conference report carrying a federal income tax rate increase (clause 5(b) of Rule XXI)

These requirements are discussed in a related CRS report, *Super-Majority Voting: Selected Implications*, by (name redacted) (CRS Report 96-339).

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