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# Voting and Quorum Procedures in the House of Representatives

**Elizabeth Rybicki, Coordinator**

Specialist on Congress and the Legislative Process

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## Voting and Quorum Procedures in the House of Representatives

The Constitution requires that a quorum, defined as a majority of the House, be present on the floor when the House transacts business. The House, however, always presumes that a quorum is present unless and until its absence is demonstrated conclusively. The rules of the House strictly limit the occasions on which a Representative may make a point of order that a quorum is not present. In current practice, Members usually make such a point of order only when a vote is taking place. If a majority of the Members fails 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.

Questions to be decided on the floor are usually first put to a voice vote. Such votes—in which those present on the floor respond by answering together “aye” (after the presiding officer asks how many are in favor) or “no” (after the presiding officer asks how many are opposed)—are very common in the House. For such votes, no public record shows how individual Members voted. In practice, such votes might be taken with few Members present on the floor. Before the final result of a voice vote is announced, however, any Member may demand a division vote or seek an electronically recorded vote. Members’ positions on these votes are publicly recorded.

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. The time for a vote by electronic device immediately following another vote by electronic device can be reduced to five minutes if the Speaker determines that Members will have an adequate opportunity to vote. The Speaker also has the authority to postpone record votes on certain questions identified in House Rules, including to approve a bill or resolution and to suspend the rules to pass a bill. Most postponed votes must be scheduled within two additional legislative days.

The procedures for securing a vote by electronic device differ based on whether the House is meeting as the House proper or instead in the Committee of the Whole (a parliamentary forum that the House, in current practice, uses to consider amendments to legislation). In the House proper, an electronic vote can be secured in one of three ways. First, one-fifth of the number of Members present on the floor can invoke their constitutional right to demand “the yeas and nays.” Second, one-fifth of a quorum (usually 44 Members), can demand a “recorded vote” under House rules. Third, if a quorum is not present, a Member can make a point of order that a quorum is not present and object to a voice vote on the grounds that a quorum is not present. Most often, after such a point of order is made, the Speaker postpones further proceedings on the question being voted on. When the House resumes consideration of the question at a time designated by the Speaker, a quorum is typically present, and an electronic vote can be secured using one of the other two methods. (If, instead, the Speaker sustained a point of order against a voice vote on the grounds that a quorum was not present, an electronic vote would take place automatically to decide the question and establish the presence of a quorum.) To be clear, these three procedures result in votes that are indistinguishable from each other in how they are conducted; they differ in how they are ordered.

When instead the House is meeting in the Committee of the Whole, 25 members can secure an electronic vote on a pending amendment or motion. The chair has the authority to postpone a request for a recorded vote on an amendment, and usually does. This allows the request to be renewed at a time the floor is crowded and a member can likely receive the support of a sufficient second to take the vote by electronic device. In addition, if a quorum (100 members of the Committee of the Whole) is not present, 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. This option is less frequently utilized, and proceedings can be postponed in this case as well.

In order to prepare for a catastrophic event, in 2005 the House created a procedure to determine how many Members constitute a quorum when a large number are missing, incapacitated, or incapable of attending House proceedings. The House must hold two lengthy quorum calls and receive a report from the Sergeant at Arms before a quorum will be determined based on the “provisional number of the House.” At the time the rule was approved, a Member raised a point of order that the provisional quorum mechanism was unconstitutional. The Speaker does not rule on constitutional questions; instead, the House determines the constitutionality of a proposition by voting to consider it or by adopting it. In this case, a question of consideration was raised, and the House voted to consider the resolution. Thereafter, the resolution was agreed to.

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**Elizabeth Rybicki,**  
**Coordinator**

Specialist on Congress and  
the Legislative Process  
-redacted-@crs.loc.gov

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## **Contents**

Introduction .....	1
The Quorum Requirement in Theory and Practice.....	1
Conducting Voice and Division Votes .....	2
Seeking an Electronic Vote.....	4
In the House .....	4
In Committee of the Whole.....	6
Time Allowed for Electronic Votes and Quorum Calls .....	7
“Not Less Than Fifteen Minutes” .....	7
Reducing the Time to Five Minutes in the House.....	8
Postponing and Clustering Votes in the House.....	9
Postponing Requests for Recorded Votes and Reducing the Time to Two Minutes in the Committee of the Whole .....	9
Securing Quorum Calls and Calls of the House .....	11
In the Absence of a Quorum.....	12
Quorum in the Case of Catastrophic Circumstances .....	13
Steps Required to Establish the House Is Without a Quorum Due to Catastrophic Circumstances .....	13
The Provisional Number of the House.....	15
Constitutionality of the Provisional Quorum .....	16
Individual Votes and Extraordinary Majorities.....	16
The Right and Responsibility to Vote.....	16
Simple and Extraordinary Majorities .....	17

## **Contacts**

Author Contact Information .....	17
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## 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.<sup>1</sup> 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.<sup>2</sup> 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 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 amendment 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 is also 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

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<sup>1</sup> This report was written by Stanley Bach, former Senior Specialist in the Legislative Process at CRS.

<sup>2</sup> References in this report to “Members” do not include Delegates and the Resident Commissioner. In the 116<sup>th</sup> Congress, the House’s rules permit Delegates and the Resident Commissioner to vote in Committee of the Whole subject to immediate reconsideration in the House of any question resolved in the Committee of the Whole by a margin within which the votes cast by the Delegates and the Resident Commissioner were decisive. For more information, see CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico*, by Christopher M. Davis.

XVIII provides that a “quorum of a Committee of the Whole House on the state of the Union is 100 Members,” not the majority of House Members that constitutes a quorum of the House.<sup>3</sup>

Second, whether the House is meeting as the House or in Committee of the Whole, a quorum is always 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 chair 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 chair 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 chair 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 is always 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.<sup>4</sup> If a majority of all 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, the “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 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:<sup>5</sup>

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<sup>3</sup> This rule first was adopted in 1890. Before then, the quorum requirement in Committee of the Whole was the same as in the House.

<sup>4</sup> As the House’s Parliamentarian has observed, “‘Business’ 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, 94<sup>th</sup> Congress, 2<sup>nd</sup> sess., vol. 5, p. 544.

<sup>5</sup> For the early parliamentary law on which many of the House’s voting procedures continue to rest, see Section 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 116<sup>th</sup> Congress edition is House Document No. 115-177.

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.

(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.<sup>6</sup> 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, “the ayes [or the noes] appear to have it,” and to pause before banging the gavel and announcing that “the 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, 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 may have actually participated in the voice vote.<sup>7</sup>

After the chair announces his or her opinion as to the outcome of a voice vote, any Member, Delegate, or Resident Commissioner has a right to demand a division vote, although they rarely do this in practice. Even less common, the chair may call for a division vote when a voice vote leaves him or her in doubt. 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. The chair then announces the result, and the question is decided.<sup>8</sup> As is true of a voice vote, the positions of individual

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<sup>6</sup> Clause 12 of Rule XVIII states, “The 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.

<sup>7</sup> This presumption is reflected in clause 4(b) of Rule XX, which states, “On 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, 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 was eventually embodied permanently in the House’s standing rules.

<sup>8</sup> Whenever 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.” *House Rules and Manual*,

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.<sup>9</sup>

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, Delegate, or Resident Commissioner may request a record vote using the House's electronic voting system.<sup>10</sup> During this kind of vote, Members usually have 15 minutes or more 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 are actually 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 former Parliamentarian<sup>11</sup>

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 has traditionally been called a roll call 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 would actually 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 the discretion to have the clerk call the names of Members instead.

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notes accompanying clause 1 of Rule XX (citations omitted).

<sup>9</sup> In notes following clause 1(b) of Rule XX in the *House Rules and Manual*, the Parliamentarian observes, “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.”

<sup>10</sup> Even after the final result is announced, the chair will often 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.

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

In practice, the electronic voting system is always used unless it is temporarily inoperative.<sup>12</sup> (For this reason, all references in this report to roll call 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 yea-and-nay vote can be ordered, as a matter of constitutional right, by one-fifth of the Members present, but this number need not constitute a quorum. 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 can usually 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.)

Clause 6(b) goes on to provide in part

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:<sup>13</sup>

Mr./Madam 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, a quorum (218 Members if there is no more than one vacancy) is present on the floor. If a quorum is present, the Speaker 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 one-fifth 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, “If a Member, Delegate, or Resident Commissioner requests a

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<sup>12</sup> The *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.

<sup>13</sup> “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.” *Procedure in the House*, p. 297 (citations omitted).



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 (one-fifth of a quorum) to order a recorded vote under this rule, compared to one-fifth 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 will probably exceed the minimal quorum of 218 (in which case one-fifth 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 recorded vote ordered under clause 1(b) of Rule XX.

If the Speaker discovers that a quorum is not present, the Speaker 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?”). 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, the presence of a quorum is established, and the House can continue to transact business. (It is rarely necessary for the Sergeant at Arms to “bring in absent Members,” because Members usually want to be recorded on all electronic votes.)

More often than not, however, the Speaker does not respond to such a point of order by counting for a quorum but instead by postponing further proceedings. As discussed fully in the section below, the Speaker has the authority to postpone votes on many questions under clause 8(a)(1) of Rule XX. When the Speaker postpones a vote after an objection to the lack of a quorum, the point of order is considered withdrawn. This is because the Speaker is effectively no longer putting the question to a vote, and it is therefore not in order to make a point of order that a quorum is not present. When proceedings are resumed on the question, the Speaker will put the question again, first by voice vote. In practice, the Speaker resumes proceedings at a time that a quorum is present on the floor. A Member, Delegate, or Resident Commissioner can, at that time, request either a recorded vote or a yea-and-nay vote, and if there is a sufficient second, the vote will be taken by electronic device.

## **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 one-fifth 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 were never 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 are almost always conducted by use of the same electronic system.

Under clause 6(e) of House Rule XVIII, “In the Committee of the Whole House on the state of the Union, the chair shall order a recorded vote on a request supported by at least 25 Members, Delegates, and the Resident Commissioner.” 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—so long as he or she is

confident that at least 24 others will rise to support the request. Even when the floor is not crowded, Members typically request a recorded vote on an amendment in this fashion because the chair can postpone the request for a recorded vote on an amendment. The chair is likely to do this and resume proceedings at a time when more Members are present and a sufficient second is likely to support the request.

Another option for Members if a quorum is not present is to state

Mr./Madam Chair, 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 chair 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 of the Committee of the Whole (which includes the Delegates and the Resident Commissioner). If a quorum is present, a recorded vote is ordered only if 25 members of the Committee of the Whole have risen to support the request.

If a quorum is not present, the chair could order an immediate quorum call. If the request is for a recorded vote on an amendment, however, the chair will likely instead postpone the vote. If the vote is postponed, the point of order of no quorum is considered withdrawn.

If the chair orders a quorum call instead of postponing the vote, members of the Committee of the Whole then come to the floor to record their presence, giving the member 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 chair returns to the pending request for a recorded vote. At this time, presumably, there are at least 25 members of the Committee of the Whole standing to support this request; if so, a recorded vote is ordered.

The key difference between these steps and those that occur in the House proper is that, under the rules, 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. In current practice, however, typically the chair of the Committee of the Whole postpones further proceedings when a point of no quorum is made, akin to the case when a point of no quorum is made in the House.

## **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 is often extended to allow as many Members as possible to be recorded. Although the Speaker or chair of the Committee of the Whole may close a vote at any time after the 15 minutes have elapsed, he or she will sometimes allow at least several more minutes for any

Members who are en route to the floor. For this reason, electronic votes frequently consume 20 minutes or longer.

The chair's discretion to decide how long to leave a vote open after 15 minutes has elapsed could be used to the majority party's advantage. In the case of a very close vote, the Speaker or chair may close the vote after 15 minutes as soon as his or her side enjoys a 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, "Requests 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, "Following 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."<sup>14</sup> A Member who misses an electronic vote 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. Alternatively, Members can submit a signed statement stating how they would have voted, and if it is submitted the same day as the vote, it will appear in the *Congressional Record* right after the vote result in a distinctive type.<sup>15</sup> Whether announced on the floor or submitted in writing, the statements can include explanations for why the Member was unavoidably detained.

## **Reducing the Time to Five Minutes in the House**

Members may be allowed less than 15 minutes to vote by electronic device when one such vote follows shortly 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 are already on the floor.

Clause 9 of Rule XX grants the Speaker 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. on any question that follows another vote by electronic device; and
2. on any question that follows a report from the Committee of the Whole.

The Speaker can only reduce the time for such votes if, in his or her discretion, Members "would be afforded an adequate opportunity to vote." The Speaker announces in advance the intention to exercise this discretion in any of these circumstances. 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. 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. In this way, Members coming to the floor for the first vote are alerted to remain for the second. Clause 9(b) of

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<sup>14</sup> *Procedure in the House*, p. 678-679 (citations omitted).

<sup>15</sup> "Missed vote" forms are available from the Democratic and Republican cloakrooms (see <https://democraticcloakroom.house.gov> and <https://repcloakroom.house.gov>).

Rule XX directs that notice of five-minute voting shall be issued prior to the first vote in a series “to the maximum extent practicable.”

## **Postponing and Clustering Votes in the House**

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 grounds 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,
- (3) agreeing to an amendment,
- (4) adopting a motion to recommit a bill,
- (5) adopting a motion to concur in a Senate amendment, with or without amendment,
- (6) ordering the previous question on any of the questions described in (1)-(5),
- (7) agreeing to the Speaker’s approval of the *Journal*,
- (8) agreeing to a motion to suspend the rules, and
- (9) agreeing to a motion to reconsider or to lay on the table a motion to reconsider.

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.<sup>16</sup> 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 regularly invoked when, on the same day, the House considers a series of motions to suspend the rules. If the Speaker was 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 or Tuesday, when many Members are in the process of returning to Washington from their districts. The Speaker’s authority under clause 8 allows votes to be scheduled later on Monday or “rolled 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 and Wednesdays.

## **Postponing Requests for Recorded Votes and Reducing the Time to Two Minutes in the Committee of the Whole**

There are four circumstances in which the time for completing an electronic vote *in Committee of the Whole* may be reduced to a minimum of two minutes. They involve a vote occurring

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<sup>16</sup> The 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 is again 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.

immediately after another vote or after a quorum call, or other circumstances when, in the discretion of the chair, two minutes will provide an adequate opportunity to vote.

First, clause 6(g) of Rule XVIII empowers the chair of the Committee of the Whole to postpone requests for a record votes on separate amendments to a bill until later during consideration of the bill, and also to cluster the votes on those amendments. That is, the Committee would vote on the amendments later, one right after the other. When the Committee of the Whole resumes proceedings at a time of the chair's choosing, the request for a recorded vote is made again, and a vote by electronic device will be taken if supported by a sufficient second (24 additional Members, Delegates, and the Resident Commissioner). In such cases, the chair may reduce the time for the second and each subsequent vote to no less than two minutes.

Second, if votes will occur in Committee of the Whole on two or more pending amendments, the chair 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 will first vote on the substitute and then on the first degree amendment (as amended, if amended by the substitute). The chair 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 as long as no debate occurs and no other motions or amendments are offered between the two votes.

Third, if votes on amendments have been postponed, when the House resolves into the Committee of the Whole to resume proceedings, time for the votes can be reduced to two minutes if Members, Delegates, and the Resident Commissioner "would be afforded an adequate opportunity to vote." This provision of Rule XVIII, clause 6(g)(2), accounts for circumstances when, for example, the Committee of the Whole rises briefly during a series of votes. It also allows two-minute votes when amendments are postponed and scheduled for a time later in the day or the next day, perhaps after a vote series that begins with questions voted on in the House. In such a situation, a 15-minute vote might occur in the House and then, after the House resolves into the Committee of the Whole, the first amendment vote could be two minutes.

Fourth, as discussed above, a Member, Delegate, or Resident Commissioner 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 may also 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 amendment vote itself will be reduced to not less than two minutes (clause 6(b)(3) of Rule XVIII).

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 chair 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 of the Committee of the Whole (which includes the Delegates and Resident Commissioner) have recorded their presence:

When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chair 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 Chair 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.

Notice quorums are now uncommon. Quorum calls in Committee of the Whole do not usually take place, because if a recorded vote is requested on an amendment, further proceedings are typically postponed until a time when a series of amendment votes is expected, and a quorum is present.

## 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. 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.”<sup>17</sup> In the former case, the Speaker responds to the point of order by counting to determine whether a quorum is present. If it is, the point of order is overruled and no quorum call ensues; if it is not, the point of order is sustained, and an automatic roll call vote is ordered, 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 was present when it began.<sup>18</sup>

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 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, Delegates, and the Resident Commissioner; (2) authorizes notice quorum calls at the

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<sup>17</sup> The 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*, vol. 5, ch. 20, *passim*.

<sup>18</sup> Clause 7(c) of Rule XX, quoted above, is an exception to this generalization.

discretion of the chair; and (3) provides for two-minute votes on amendments following regular quorum calls, again at the chair's discretion.<sup>19</sup>

In addition, the same rule controls when a point of order that a quorum is not present can be made in Committee of the Whole. (Calls of the House are not permitted in Committee of the Whole.) In brief, the rule states that

- the chair 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 Chair 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.<sup>20</sup>

## **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.<sup>21</sup> 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 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(a) of Rule XX.

This clause provides in part that, “in the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.”<sup>22</sup> 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.”

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<sup>19</sup> The rule also provides that, if fewer than 100 Members respond to a quorum call, the Committee must rise “and the Chair shall report the names of absentees to the House.” This is very unlikely to happen in the modern House.

<sup>20</sup> The 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 Chair 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.

<sup>21</sup> “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*, vol. 5, p. 295.

<sup>22</sup> Under the modern practice, the call to compel attendance of absent Members rarely occurs, but for an example of proceedings see *Congressional Record*, daily edition, November 2, 1987, p. H9459.

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.”<sup>23</sup> 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.

## **Quorum in the Case of Catastrophic Circumstances<sup>24</sup>**

Article I, Section 5, clause 1 of the Constitution states that “a Majority of each [House] shall constitute a Quorum to do Business.” A quorum has long been defined as a majority of the whole number of the House, and the whole number of the House has long been viewed as the number of Members elected, sworn, and living. Whenever the death, resignation, disqualification, or expulsion of a Member results in a vacancy, the whole number of the House is adjusted.<sup>25</sup>

In the event of a catastrophe, however, it may not be immediately known whether a Member is alive or dead, thereby making it impossible to adjust the whole number of Members. Furthermore, if a Member is incapacitated but living, or unharmed but unable to attend the proceedings of the House, he or she would still count toward the whole number used to determine a quorum. Missing, injured, and stranded Members are still “elected, sworn, and living.” If many such Members are affected, and the Congress needs to act, this situation could prove problematic because it may be impossible to establish a quorum.

In order to address this issue, in 2005 the House modified clause 5 of Rule XX to prepare for a catastrophic event that leaves a large number of Members missing, incapacitated, or incapable of attending the proceedings of the House. The rule establishes a method for establishing a “provisional quorum” in the case of a catastrophic event. This method did not provide a new means for determining the whole number of the House; on the contrary, it is a method to be used provisionally until a quorum can be constituted by a majority of the whole number of the House. Under the rule, if the House is without a majority of Members elected, sworn, and living due to catastrophic circumstances, then a quorum shall be a majority of the “provisional number” of the House.

## **Steps Required to Establish the House Is Without a Quorum Due to Catastrophic Circumstances**

The rule requires four steps to be taken in order, and without intervening adjournment, to establish that the House is without a quorum due to catastrophic circumstances. Only after the steps described below are taken will a new number required for a quorum be determined based on

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<sup>23</sup> *Procedure in the House*, p. 273.

<sup>24</sup> This section was prepared by Elizabeth Rybicki.

<sup>25</sup> This long-standing practice was codified in House Rule XX, clause 5(c) in the 108<sup>th</sup> Congress. H.Res. 5 of the 109<sup>th</sup> Congress also amended the rules to include the long-standing definition of whole number of the House: “the number of Representatives, chosen, sworn, and living whose membership in the House has not been terminated by resignation or action of the House.”



the provisional number of the House. A majority of Members present may terminate the proceedings by adopting the motion to adjourn.

### ***First, Dispose of a Motion to Compel the Attendance of Absent Members***

If the absence of a quorum is demonstrated,<sup>26</sup> then under a House rule (dating to 1789) a Member can make a motion to compel the attendance of absent Members. This motion, described in House Rule XX, clause 5(a), must first be disposed of, either favorably or unfavorably, before any other steps are taken to establish that the House is without a quorum due to catastrophic circumstances.<sup>27</sup>

The motion to compel the attendance of absent Members requires a majority vote for adoption, and that majority must comprise at least 15 Members. If the motion is adopted, then the call of the House occurs through Members presenting themselves, perhaps after receiving notification from the Sergeant at Arms and having their presence recorded by the Clerk. If the motion is not adopted, either because it failed to garner support from a majority of Members present or because the majority supporting it is fewer than 15 Members, then the motion is still considered “disposed of” and the other steps necessary to establish that the House is without a quorum due to catastrophic circumstances can occur.

### ***Second, Conduct a 72-Hour Call of the House That Does Not Produce a Quorum***

After disposing of the motion to compel the attendance of absent Members, the House must have a call (or series of calls) of the House over a period of 72 hours, excluding time spent in recess.<sup>28</sup> The call could be the one that was ordered by adoption of the motion to compel the attendance of absent Members. The Speaker<sup>29</sup> could also entertain a motion for a call of the House under clause 7(b) of Rule XX. However ordered, if the call failed to produce a quorum based on the existing whole number of the House after 72 hours, then the call could be closed, and additional steps to establish that the House is without a quorum due to catastrophic circumstances could be taken.

### ***Third, the Speaker Must Receive a “Catastrophic Quorum Failure Report” and Announce Its Contents to the House***

After the call of the House is closed, the Speaker, with the majority and minority leaders, can then receive from the Sergeant at Arms (or designee) a “catastrophic quorum failure report” that states that the House cannot establish a quorum because of catastrophic circumstances such as an attack, natural disaster, or contagion. According to the rule, a catastrophic quorum failure report must contain

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<sup>26</sup> As discussed at length above, the failure of the House to comply with the constitutional quorum requirement is demonstrated if a majority of the whole number of the House does not respond to a quorum call or a call of the House or do not participate in a record vote.

<sup>27</sup> “Section-by-Section Summary of H.Res. 5, Adopting House Rules for the 109<sup>th</sup> Congress,” *Congressional Record*, daily edition, January 4, 2005, p. H13.

<sup>28</sup> Under some conditions, House rules grant the Speaker the authority to declare a recess. Clause 12(b) of Rule I states: “To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.” Clause 12(a) also authorizes the Speaker to declare a recess when no question is pending before the House.

<sup>29</sup> In catastrophic circumstances, the person exercising the authorities of the office of Speaker might not be an elected Speaker or Speaker pro tempore. He or she might be a Speaker pro tempore appointed under clause 8(a) or clause 8(b)(1) of Rule I or acting under clause 8(b)(3) of Rule I.

- the number of known vacancies,
- a list of former Representatives whose seats are vacant (this list would include any known dead Representatives as well as any Representatives who resigned or who were removed by action of the House if their seats had not yet been filled),
- a list of Representatives considered incapacitated,
- a list of Representatives not incapacitated but still incapable of attending the proceedings of the House, and
- a list of Representatives not accounted for.

The Sergeant at Arms is directed by the rule to prepare the report in consultation with the Attending Physician to the Congress (or a designee), the Clerk of the House (or a designee), and public health and law enforcement officials. The Speaker, after consultation with the two party leaders, is required to announce the content of the report to the House. This announcement is not subject to appeal.

#### ***Fourth, Conduct a 24-Hour Call of the House That Does Not Produce a Quorum***

Even after the Speaker’s announcement, the House is not considered to be without a quorum due to catastrophic circumstances until the completion of a second extended call of the House. This call of the House can be ordered under the procedures described in clause 5(a) of Rule XX or by a motion for the call under clause 7(b). This second call of the House, or series of calls, could be closed after 24 hours, excluding the time spent in recess, if it does not produce a majority of the whole number of the House.

### **The Provisional Number of the House**

If all four of these steps are completed, then the House has established that it is without a quorum due to catastrophic circumstances. A quorum for conducting business can then be determined based on the “provisional number of the House.” The number of Members who respond to the 24-hour call of the House will be the provisional number of the House, and a majority of the provisional number will constitute a quorum for doing business. If Members arrive after the call of the House, the provisional number is increased accordingly. If any Member counted under the 24-hour call of the House to determine the provisional number later ceases to be a Representative due to death, resignation, or action by the House, then the provisional number of the House would also be reduced accordingly.<sup>30</sup>

The catastrophic quorum failure report must be updated each legislative day; in other words, it must be updated each time the House reconvenes after an adjournment. The Speaker is required to make these updates available to the House. If at any time a sufficient number of Members arrive to constitute a quorum of the whole number of the House, then the provisional number would no longer be in effect.

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<sup>30</sup> According to the rule, if the House is conducting business with a provisional quorum, then it cannot expel a Representative who is not incapacitated but is otherwise incapable of attending the proceedings of the House (Rule XX, clause 5(c)(6)).

## Constitutionality of the Provisional Quorum

Some Members expressed concern that the catastrophic quorum rule was unconstitutional. When H.Res. 5 was called up for consideration, a Representative made a constitutional point of order. The Speaker declined to entertain the constitutional point of order, citing numerous earlier precedents barring the Speaker from ruling on the constitutionality of a pending proposal.<sup>31</sup> Instead, typically, the House determines for itself the constitutionality of a proposition either by voting to consider it or voting to adopt it. The Representative then raised the question of consideration, and the House by a vote of 224-192 agreed to consider H.Res. 5 and the provisions in it dealing with the new quorum procedure. Thereafter, H.Res. 5 was agreed to by a vote of 220-195. Whether an attempt will be made to challenge in court the constitutionality of the rule is not yet certain. Neither is it certain that a Member has legal standing to bring such a suit without the new quorum rule ever having been implemented.<sup>32</sup>

## 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 such 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 having 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 “it has been found impracticable to enforce the provision requiring every Member to vote.”<sup>33</sup> Also, in recent practice, “the Speaker has held that the Member 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 the Speaker’s own power to deprive a Member of the constitutional right to vote.”<sup>34</sup> In the same vein, clause 10 of Rule XXIII, the Code of Official Conduct, states that a Member, Delegate, or Resident Commissioner 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:

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<sup>31</sup> *Congressional Record*, daily edition, January 4, 2005, p. H10. The Speaker cited the numerous precedents in *House Manual*, §628, p. 341, and specifically Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol. II, §1255, pp. 805-807 and §§1318-1320, pp. 873-874.

<sup>32</sup> For more information on the issue of a catastrophic loss of Members of Congress, see archived CRS Report RL31394, *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members*, by Sula P. Richardson and Paul S. Rundquist; and archived CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist, available to congressional clients from this report’s author.

<sup>33</sup> *House Rules and Manual*, notes accompanying clause 1 of Rule III.

<sup>34</sup> *House Rules and Manual*, notes accompanying clause 1 of Rule III.

(a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member 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 "in case of a tie vote, a question shall be lost."

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

- to expel a Member,
- to override a presidential veto,
- to propose a constitutional amendment,
- to remove political disabilities (now obsolete), and
- 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:

- Two-thirds: to agree to a motion to suspend the rules (clause 1(a) of Rule XV),
- Two-thirds: to agree to a motion to dispense with the call of the Private Calendar (clause 5(a) of Rule XV), and
- Two-thirds: to consider a special rule on the same day the Rules Committee reports it (clause 6(a) of Rule XIII).

## Author Contact Information

Elizabeth Rybicki, Coordinator  
Specialist on Congress and the Legislative Process  
[redacted]@crs.loc.gov-....

## Acknowledgments

This report was written by Stanley Bach, a former Senior Specialist in the Legislative Process.

## Key Policy Staff

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<b>Area of Expertise</b>	<b>Name</b>
Legislative Procedure	Christopher M. Davis
Legislative Procedure	Michael Greene

---

Legislative Procedure	Valerie Heitshusen
Legislative Procedure	Jane A. Hudiburg
Legislative Procedure	Mark J. Oleszek
Legislative Procedure	Walter J. Oleszek
Legislative Procedure	Elizabeth Rybicki

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