IN SHADOW OF CORONAVIRUS, CONGRESS CONTEMPLATES 'ONE OF THE BIGGEST RULE CHANGES IN THE LAST CENTURY'

Hunter Walker and Jenna McLaughlin
Yahoo News • March 26, 2020

As the House of Representatives prepares to pass a historic $2 trillion coronavirus relief package, House Speaker Nancy Pelosi faces a bigger challenge: figuring out a way for 435 members to cast votes in the time of social distancing.

The pandemic has left multiple members of Congress in quarantine and led to restrictions on movement that could prevent the House from voting. While House leadership has indicated they hope to pass the initial coronavirus aid bill quickly using a voice vote, the likely need for further relief and other legislation has led Pelosi to consider new procedures, including measures for remote voting that a report from the House Rules Committee described as "one of the biggest rule changes in the last century."

On Wednesday, the Senate voted to pass a $2 trillion relief package that will give some Americans $1,200 checks to help cover expenses during the coronavirus pandemic. The House of Representatives is set to vote on the package on Friday. In a dramatic illustration of the dangerous and unprecedented situation, the sergeant at arms, Paul Irving, and Dr. Brian Monahan, the House physician, sent an email to all members on Thursday outlining numerous precautionary measures for the vote. Voting will be conducted in 16 separate groups organized alphabetically to allow members to stay 6 feet apart.

"Members should use extreme care and deliberation when making the determination to travel to Washington, D.C.," the email said.

House Majority Whip Steny Hoyer has said Friday's coronavirus vote will be a voice vote, which does not require all House members to be present. However, a voice vote can be derailed by a single objection from any one of the 435 House members. And multiple members have said they are unsure whether they will support the legislation.

On Wednesday, Pelosi told members of the Democratic Caucus in a phone call that she hopes the bill passes without objection, according to a Hill source. If there is not unanimous consent for the aid, Pelosi said,

there will have to be a floor vote and she consulted with the House physician to get ideas for how that might safely proceed.

In a press conference on Thursday, Pelosi indicated she was optimistic there would be no objections or need for members to vote on the House floor. "I feel certain that we will have a strong bipartisan vote," Pelosi said.

But even if the initial coronavirus relief package passes, difficult questions remain about how Congress can proceed as some members are quarantined and the nation faces the prospect of an extended lockdown.

Last week, Pelosi, whose office did not respond to multiple requests for comment, assigned Democratic House Rules Committee Chairman James McGovern the task of compiling a report on "voting options during the COVID-19 pandemic." These changes would only apply to the House.

In the Senate, Sen. Rob Portman, R-Ohio, and Sen. Dick Durbin, D-Ill., have introduced a bipartisan resolution for remote voting. However, McGovern's report suggested remote voting would be too time-consuming to implement quickly during this current crisis. He also concluded that remote voting comes with security and legal concerns and recommended different measures for the House to conduct votes when all members are not present on Capitol Hill.

McGovern, a Massachusetts Democrat, turned in his report late Monday night. In a letter accompanying the report, McGovern said unanimous consent or a voice vote, two current procedures, would be "the quickest and likely best path forward" to pass the coronavirus relief package, since they would not require the full House to be present. McGovern's report noted unanimous consent was used the last time the U.S. faced a similar crisis over a century ago.

"By far the best option is to use the existing House rules and current practices. During the 1918 Influenza Pandemic, the House did not adopt a method of remote voting — e.g. by telegraph or correspondence. Instead they eventually utilized a unanimous consent agreement to pass critical legislation despite not having a physical quorum present, recognizing the importance of conducting business in the chamber at a time of national crisis," the report said.

However, both voice votes and unanimous consent can be derailed by a single objection. And even if there is widespread support for the initial coronavirus relief package, Pelosi and others have said there will likely need to be other aid legislation passed soon as the pandemic continues.

McGovern's report acknowledged the ongoing questions about how Congress could continue to go about its business amid a lengthy quarantine.

"While passing legislation without a recorded vote is the easiest path procedurally and the best option for Member and public safety, it may not be possible since any single Member can prevent it."

McGovern's report went on to review other measures, but ultimately recommended proxy voting "in which an absent Member gives a present Member their proxy to cast an actual vote for them, for a prescribed period of time."

According to the Hill source. McGovern also said on Tuesday's caucus call that he believed Republicans would be amenable to implementing proxy voting.

A spokesperson for Republican House Minority Leader Kevin McCarthy did not respond to a request for comment. However, at least one Republican, Rep. Liz Cheney, R-Wyo., praised McGovern's "excellent report" and expressed support for his recommendation in a tweet on Monday.

"Members must be able to represent our constituents while not spreading the virus. A bipartisan solution for the emergency may be proxy voting for those who can't travel," Cheney wrote.

Multiple state legislatures have already adopted proxy voting due to the pandemic. While proxy voting would require some members to be present on Capitol Hill, McGovern argued it is far more feasible than remote voting, which would involve a system that enabled members of Congress to cast votes from a separate location.

While the current voting system on the House floor is electronic, it is closed off and disconnected from the internet. According to the Hill source, McGovern discussed his recommendations on a call with Pelosi and the Democratic caucus on Tuesday, saying one of the issues with any internet-based voting system is that it paves the way for rival states, including China and Russia, to interfere.

A spokesperson for McGovern declined to comment on the call and referred to his report, which addressed potential security concerns surrounding remote voting. The report says a "secure method for voting would be critical and require an expert staff dedicated to ensuring there are no foreign or domestic attacks threatening the integrity of a vote by any Member, or threatening the system's functionality as a whole."

While experts agree that remote voting comes with security concerns, they see this as a surmountable problem. Larry Pfeiffer, a former chief of staff to CIA and NSA Director Gen. Michael Hayden, told Yahoo News he believes "Russian and Chinese interference should be expected if anything less than a secure communications solution is considered" for remote voting. However, Pfeiffer also indicated he believes the U.S. military and intelligence community could be consulted to quickly come up with a solution that would "guarantee communications integrity, authenticity, confidentiality and availability."

"In this instance, I'd recommend the 'KISS' solution: Keep it simple, stupid,'" Pfeiffer said.

"Organizations like the U.S. military and the National Security Agency have been experts in the field of secure messaging for decades. They should be consulted and a quick, simple, easy-to-use solution provided."

Daniel Schuman, policy director for Demand Progress, a progressive advocacy organization focused on digital issues, told Yahoo News that arguments that Russia or China will interfere or disrupt remote voting don't make sense. He said concerns over disruption or authentication can be addressed, given the limited number of participants, the ability to see and hear votes over proven teleconference solutions like Zoom, and the ability to go back and verify that votes were recorded as intended, among other options. Schuman published a review of McGovern's report on Tuesday that criticized the Rules Committee for not analyzing "remote voting by teleconference" or contemplating an "extended absence from the Capitol."

"Simply put, the House of Representatives must instantiate the option for emergency remote voting by teleconference that can be invoked during the coronavirus pandemic," Schuman wrote. "This option should not be a first resort. Indeed, the House should try to continue its operations under current House rules."

In his interview with Yahoo News, Schuman was also critical of Pelosi for not acting sooner. "Speaker Pelosi should have put in place remote voting and options to put it in place before they left," Schuman said.

Members of the House of Representatives have also called for remote voting. On March 18, as concern about the coronavirus mounted, Rep. Don Beyer, D-Va., took to Twitter to call for the House to implement a remote voting plan.

"Amid an epic crisis, the continuity of government operations is of paramount importance. It's 2020 — Congress can and should be able to

operate in all circumstances, including without having to be physically present in the same room. We need remote voting," Beyer wrote.

The Hill source said that Rep. Jerrold Nadler, D-N.Y., was also adamant about the need for remote voting in the Democratic Caucus telephone call on Tuesday.

"We must send the right message to the country by operating remotely," Nadler said, according to the source. "Hill technical staff should set up a voting station in every member's home."

Nadler did not immediately respond to requests for comment. In a statement to Yahoo News, Beyer said he believes there are secure methods of remote voting.

"Congress must be able to govern the country in times of crisis, and while the COVID-19 pandemic is the latest crisis threatening the continuity of operations on Capitol Hill, it is not the first and probably will not be the last," Beyer said. "There are ways to guarantee the security and authenticity of remote voting by Members of Congress and we should aggressively pursue them."

Congress has investigated remote voting in the past, particularly following the Sept. 11 attacks, when a continuity of government commission was set up to make recommendations for alternate procedures that could be implemented in a disaster. However, as Norman Ornstein, a scholar at the American Enterprise Institute who served on the commission, wrote in a piece for the Atlantic earlier this month, all of those recommendations "went nowhere."

But security isn't the only concern surrounding the implementation of remote voting — particularly given the urgency of the current crisis. The Rules Committee report described remote voting as "constitutionally untested," meaning legislation passed via remote vote "could run the risk of being challenged in court," which might "delay implementation" of urgent coronavirus measures. Unlike remote voting, the report said, proxy voting "has a basis in parliamentary tradition" and would not be subject to the same challenges.

"Providing for remote voting would require significant changes to multiple core House rules — it would not be possible to simply add a clause allowing Members to vote from elsewhere. Alterations much smaller than the ones contemplated have taken years of deliberation and debate," the report said.

The report said remote voting "would require major changes to foundational House rules surrounding deliberation, voting, and

attendance" that could cause "unintended consequences."

"A rule change of this magnitude would also be one of the biggest rule changes in the last century, in one of the most critical institutions in our country," the report said.

While the rules committee report recommended proxy voting as a simpler option during the pandemic, it is not without its own challenges. Like the coronavirus relief package, a rules change to enable proxy voting in the current climate would need to be passed by unanimous consent or voice vote.

As a result, it could also be derailed by a single objection.