

July 16, 2020

Hon. Zoe Lofgren, Chair
Committee on House Administration
U.S. House of Representatives

Hon. Rodney Davis, Ranking Member
Committee on House Administration
U.S. House of Representatives

Re: Hearing Entitled “Exploring the Feasibility and Security of Technology to Conduct Remote Voting in the House”

Dear Chair Lofgren, Ranking Member Davis, and members of the Committee on House Administration:

We write to commend the Committee on House Administration for its well-timed hearing entitled *Exploring the Feasibility and Security of Technology to Conduct Remote Voting in the House* and to share our recommendations on the topic. We write on behalf of Demand Progress, a progressive non-profit focused on building a modern democracy, and the Lincoln Network, a conservative non-profit with a mission to bridge the gap between innovation and policy. We have spent a great deal of time and effort understanding and making recommendations to strengthen the legislative branch.

To understand how the legislative branch functions, it is important to understand the modern House of Representatives, forged by Speaker Newt Gingrich. When Republicans seized the House majority in 1995, Gingrich oversaw the work that accelerated the House’s transformation from the analog age into the digital. This included the reorganization of operational information technology under the newly created Office of the Chief Administrative Officer, the creation and adoption of the House Information Systems Program Plan by the newly created Computer and Information Services Working Group, and the subsequent CyberCongress project.¹ Fulfilling his long standing posture against corruption, he also shook up ossified practices like ice-delivery and member car washes, which reeked of decadence.²

Despite helping advance positive reforms, Gringrich’s approach to governance greatly undermined Congress as an institution. It resulted in the gross centralization of power in the Speakership, the evisceration of its committee and personal offices, and the undermining of its support offices and agencies. The House post-Gingrich is less deliberative, more polarized, and has significantly less capacity to fulfill its constitutional responsibilities of legislation, oversight, and constituent services.

¹ “CyberCongress Accomplishments During the 104th Congress,” presentation of the Computer and Information Services Working Group to the Committee on House Oversight (February, 1997), https://web.archive.org/web/20010105040400/http://www.house.gov:80/cha/publications/cybercongress/body_cybercongress.html.

² We do not wish to make too fine a point here, as he was the first Speaker ever to be reprimanded by the House for ethical misconduct. “House Reprimands, Penalizes Speaker,” John Yang, *Washington Post* (January 22, 1997), <https://www.washingtonpost.com/wp-srv/politics/govt/leadership/stories/012297.htm>.

A few data points as illustration. The third bullet point in Speaker Gingrich's *Contract with America* pledged to "cut the number of House committees, and cut committee staff by one-third."³ He kept his pledge, and went further.⁴ During his first Congress as Speaker, House committee staff decreased by 33%, from 1,947 staff in 1994 to 1,306 staff in 1996. Personal office staff decreased by 10%, from 7,284 to 6,532. In that same time period, GAO staff decreased by 20%, from 4,572 to 3,677, and CRS staff decreased by 13%, from 835 to 729. The Office of Technology Assessment was defunded, and significant efforts were made to undermine other legislative support agencies. He also undermined the Democratic Study Group and other caucuses, which were a forum for member collaboration.⁵ The House of Representatives has not recovered, and power has shifted to the executive branch and lobbyists – and to the Speaker's office.

The fifth plank of the *Contract With America* was a ban on the casting of proxy votes in committee. The Congressional Research Service has a useful summary of how proxy voting worked in Committees prior to the 104th Congress.⁶

In the 103rd Congress (1993-1994), the last Congress in which proxy voting was permitted, 18 of the House's 22 standing committees authorized proxy voting in their rules. If a committee permitted proxy voting, House rules required that a member's proxy authorization:

- be in writing,
- assert that the member was absent on official business or was otherwise unable to be present at the committee meeting,
- designate the person who was to execute the proxy,
- be limited to a specific measure or matter and any amendments or motions pertaining thereto, and
- be signed by the member assigning his or her vote and contain the date and time of day it was signed.

Members generally indicated in their proxy authorization how they wished to vote on a specific question. Blanket (or "general") proxies were permitted only for procedural motions such as motions to recess or adjourn. Several committees' rules dictated the wording of a proxy authorization or provided a boilerplate form for the purpose.

³ "Contract With America," <http://media.mcclatchydc.com/static/pdf/1994-contract-with-america.pdf>.

⁴ "Science, Technology, and Democracy: Building a Modern Congressional Technology Assessment Office," Zach Graves and Daniel Schuman (January 2020), pp. 13-17, https://ash.harvard.edu/files/ash/files/293408_hvd_ash_science_tech_and_democracy_report.pdf.

⁵ See, e.g., "The Man Who Broke Politics," McKay Coppins, *The Atlantic* (October 17, 2018), <https://www.theatlantic.com/magazine/archive/2018/11/newt-gingrich-says-youre-welcome/570832/>; "When Liberals Were Organized," Julian E. Zelizer, *The American Prospect* (January 22, 2015), <https://prospect.org/power/liberals-organized/>.

⁶ "The Prior Practice of Proxy Voting in House Committee," Christopher Davis, Congressional Research Service (May 1, 2020), <https://www.everycrsreport.com/reports/IN11372.html>.

The proxy voting rules adopted by the House of Representatives in response to the emergency triggered by the COVID-19 pandemic, by contrast to the rules that existed prior to the 104th Congress, remove any discretion on the part of the person authorized to cast the vote, put in place transparency requirements, and contemplate the instantiation of *remote deliberations*, whereby a member fully and contemporaneously participates in legislative debate and has the ability to make motions and vote in real time on pending matters.

The COVID-19 pandemic necessitates the ability of members to deliberate remotely. We articulated principles for remote deliberation back in March,⁷ and they include deeming members present when they are present via electronic means and permitting the counting of votes cast by members present via electronic means. Demand Progress published a comprehensive memorandum analyzing remote deliberations on March 24,⁸ which started with the premise: “We would rather have a House of Representatives that can deliberate remotely than a House of Representatives unable to deliberate at all.”⁹

This remains the crucial choice. And unlike in the era of Speaker Gingrich, where a 24-hour news channel was considered modern and the Internet was still described in terms of an information superhighway, technology has sufficiently advanced where members serving on a committee or engaged in “floor” debate can remotely engage in debate and cast votes as if they were present in person. Members can be seen and heard, they can introduce amendments and make motions, they can be advised by staff, and they can participate in the legislative process. In addition, they have the ability to collaborate with one another regardless of whether they are in Washington, D.C., as they can communicate by phone, text, email, video-conference, and so on. This level of deep engagement with one another and in the legislative process should be the goal of any legislature.

We have seen some instances where professional commentators are holding out unreasonable standards for online legislative deliberations that go beyond what is the current practice for in-person deliberations. For example:

- There are instances where members have trouble making themselves heard during deliberations when they begin speaking. This happens when they communicate over the internet, but this happens in person, too, when they forget to turn on the mic.
- There are instances where members may miss a proceeding because their internet connection breaks. This happens in person, too, when a member misses a flight or their car

⁷ “Continuity of Legislatures,” Daniel Schuman, Demand Progress (March 17, 2020), https://s3.amazonaws.com/demandprogress/reports/Memo_for_Legislatures_on_their_Continuity_in_Emergencies_2020-03-17.pdf.

⁸ “Summary and Analysis: House Rules Committee Democrats Report on Remote Voting,” Daniel Schuman, Demand Progress (March 24, 2020), https://s3.amazonaws.com/demandprogress/reports/Summary_and_Analysis_House_Rules_Committee_Democrats_Report_on_Remote_Voting.pdf.

⁹ More resources on remote deliberations can be found at <https://www.continuityofcongress.org/>.

breaks down. Few members have a perfect voting record.

- There may be instances where members cast the wrong vote when communicating electronically. This happens in person as well, where members push the wrong button on the floor or say the wrong thing (and sometimes hand their voting card to another member). We have error correction mechanisms for this, and the nature of public votes means such errors can be identified and corrected.

There are electronic equivalents to in-person actions that fulfill the same purposes. A member wishing to be recognized can electronically raise a hand in the same way the member could rise from a sedentary position. All that is necessary to make this work is a good will, significant groundwork to get the technology functioning properly, and a desire to keep the House operating. We applaud the questions raised by Ranking Member Davis on May 14th is exactly the kind of smart technical questions that should be asked and addressed,¹⁰ and we agree that a crawl-walk-run approach is a smart way to conceptualize the shift in House operations.¹¹

We have significant concerns that recent events have further centralized power in the hands of leadership over committees and the rank-and-file. This concern does not arise from proxy voting, but a combination of the fact that in-person voting is so unsafe that it can take hours to conduct a single vote and that the nature of an emergency is that power flows to the center. Proxy voting may be a factor, but a comparatively minor one.¹²

A move to instantiate regulate order through fully remote deliberations may help ease the pressure to reduce time spent with members on the floor. That, in turn, may reduce the pressure to constrain floor activities, which, in turn, may empower committee deliberations. We also recognize that the extraordinarily power now held by leadership is the natural result of the changes wrought in the House of Representatives by Speaker Gingrich. Addressing that issue is beyond the scope of a hearing on remote voting technology.¹³

We thank you for your kind consideration.

Sincerely yours,

Daniel Schuman
Policy Director, Demand Progress

Zach Graves
Head of Policy, Lincoln Network

¹⁰ “Letter from the Hon. Rodney Davis to the Hon. James McGovern,” (May 14, 2020) https://s3.amazonaws.com/demandprogress/documents/2020-05-14_CHA_RM_Davis_Concerns_With_H.Res._965_.pdf.

¹¹ Ibid.

¹² “Initial Thoughts on the House’s Remote Deliberation Resolution,” Daniel Schuman, First Branch Forecast (May 13, 2020), <https://firstbranchforecast.com/2020/05/13/initial-thoughts-on-the-houses-remote-deliberation-resolution/>.

¹³ But we would welcome a conversation on that topic. A starting point is our bipartisan letter “Strengthening the Legislative Branch by Increasing its 302(b) Allocation,” (June 22, 2020), https://s3.amazonaws.com/demandprogress/letters/Strengthening_the_Legislative_Branch_by_Increasing_its_302b_Allocation_2020-06-22.pdf.