

Congress could grant the temporary House speaker more power. Here's how.

Congress has the authority to empower Rep. Patrick T. McHenry to be speaker for a time. Would it want to?

By Amber Phillips
The Washington Post

If House Republicans continue to struggle to elect a speaker, they have two options many consider less palatable:

No. 1: Work with Democrats to elect a consensus candidate.

No. 2: Give the placeholder speaker the authority to act as if he were speaker.

Working with Democrats would be a last resort, so let's explore what the second option would look like — and the potential pitfalls of empowering an interim speaker.

The House does have the authority to grant the acting speaker more power

The House of Representatives can't function without a speaker. But if a majority of lawmakers agree to change the rules about what a temporary speaker can do, there's nothing stopping them, said Matthew Green, a professor of politics at Catholic University and co-author of a book about former House speaker Newt Gingrich. "The Constitution says almost nothing about the speakership, and the Supreme Court gives Congress a lot of leeway in how they operate internally," he said.

Right now, the head of the House is Rep. Patrick T. McHenry (R-N.C.), and his job is very limited. He can only preside over floor debate and voting about the election of a new speaker, said Charles Johnson, a former parliamentarian for the House.

McHenry's title is technically acting speaker pro tempore. "His position is temporary by the very name of it," said Ray Smock, a former historian for the House of Representatives.

McHenry got the job when Rep. Kevin McCarthy (R-Calif.) was ousted by hard-line Republicans in early October. McHenry was apparently at the top of a secret list that McCarthy was required to make to designate who would temporarily replace him if he had to leave office for whatever reason.

Congress put that succession procedure in place and firmed up the very limited role of the temporary speaker after the Sept. 11, 2001, terrorist attacks.

But all it takes is a majority vote to change those rules.

With an acting speaker, the House could function largely as normal

“They could just pass a resolution making him speaker pro tempore, so that would take the ‘acting’ out of his title,” said Josh Chafetz, a professor at Georgetown Law and author of a book about Congress’s authority. “And everybody agrees the House can do business under a speaker pro tempore.”

McHenry could then bring legislation to the floor that many Republicans desperately want to vote on, such as aid for Israel and Ukraine, and a spending bill to avoid a looming government shutdown next month.

Republicans could make him an acting speaker for a set amount of time; there’s been some talk of doing so through the end of this year.

Or they could leave the time frame open-ended, and McHenry would step down as soon as the House elected a permanent speaker.

But this plan requires a majority vote to pass

Passing the plan would require near-unanimous agreement among House Republicans, or, if Republicans don’t have the votes among themselves, some of them would have to make a deal with Democrats to empower McHenry. Moderate Republicans and top House Democrats appear interested in this option, although Rep. Jim Jordan (R-Ohio) has opposed the idea as he tries to win over enough support to become speaker himself.

But *any* speaker doesn’t solve Republicans’ fundamental problem, which is that they’re struggling to govern. With nearly every contentious issue before the House this past year — including spending bills, avoiding a government default and the current leadership vacuum — getting a majority vote among Republicans has been nearly impossible.

The issue is exacerbated by Republicans’ slim majority. They have only a handful of votes to spare each time.

“The real issue is that there isn’t a governing majority in the House right now,” Chafetz said. “So you could empower anyone to sit at the front of the room and allow business to proceed, but if you don’t have a governing majority, then doing any actual business is going to be difficult.”

There’s also a slippery-slope argument to be made here

The speaker is a powerful role, controlling nearly every function of the House. The rules of the House say this person needs to be elected by a majority of House lawmakers to have the job. McHenry was not elected to the position, and he’s never run for speaker.

“He got the job because he was on the secret list,” Green said. “It’s really problematic.”

So empowering him makes many lawmakers uncomfortable, because they'd be off-roading from the official rule book.

However, everything McHenry does is precedent-setting, because the House has never been in this situation before.

"We have to run out of options first," Rep. Garret Graves (R-La.) told The Washington Post.