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December 23, 2020

By **CM/ECF**

Mark Langer  
Clerk of Court  
U.S. Court of Appeals for the D.C. Circuit  
333 Constitution Ave. N.W.  
Room 5205  
Washington, D.C. 20001

Re: *McCarthy v. Pelosi*, No. 20-5240

Defendants-Appellees respectfully submit this letter to inform the Court that two of the plaintiff Members of Congress, Reps. Paul Mitchell III and Gregory Richard Gianforte, recently voted remotely by proxy.<sup>1</sup> Their use of the remote-voting procedures that they challenge as unconstitutional highlights why this suit must fail.

Their use of remote voting underscores that plaintiffs lack standing. Given that the remote-voting rules apply to all Members equally, plaintiffs were always wrong (Reply Br. 17-18) that their “votes have been denied their full validity in relation to the votes of colleagues.” The decision by two plaintiffs to vote remotely further refutes the claim that the rules discriminate against plaintiffs. This case is an abstract dispute over rules that do not affect plaintiffs in a concrete and particularized way. It does not belong in court.

Two plaintiffs’ use of remote voting also reaffirms the compelling interests that led the House to adopt the rules—permitting the House to conduct its business safely during a crisis while maximizing representation in Congress. In announcing his decision to vote remotely, Rep. Mitchell explained that his physician “implored” him

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<sup>1</sup> See Members Recorded Pursuant to House Resolution 965 (Dec. 21, 2020), <https://perma.cc/HF37-TD3N> (recording proxy votes from Reps. Mitchell and Gianforte); Gianforte Letter (Dec. 20, 2020), <https://perma.cc/934Y-DNJF> (designating Rep. Suozzi as his proxy); Mitchell Letter (Dec. 3, 2020), <https://perma.cc/6QG9-6QEZ> (designating Rep. Spanberger as his proxy).

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not to travel to Washington, adding that voting remotely allowed him to participate in key legislation without risking his family's health.<sup>2</sup> It is fitting that the rules permitted him to vote on the House's recent coronavirus relief package without putting his family at risk. Plaintiffs' ill-conceived suit would prevent similarly situated Members from voting and deprive millions of constituents of representation in the House.

We respectfully request that this letter be provided to the panel of judges assigned to this case.

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter

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<sup>2</sup> Rep. Paul Mitchell (@RepPaulMitchell), Twitter (Dec. 3, 2020, 3:18 PM), <https://twitter.com/RepPaulMitchell/status/1334592804400623617>.

**CERTIFICATE OF SERVICE**

I certify that on December 23, 2020, I caused the foregoing document to be filed via the U.S. Court of Appeals for District of Columbia Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter  
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