AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 108–141

HOUSE CONCURRENT RESOLUTION 190, TO ESTABLISH A JOINT COMMITTEE TO REVIEW HOUSE AND SENATE RULES, JOINT RULES, AND OTHER MATTERS ASSURING CONTINUING REPRESENTATION AND CONGRESSIONAL OPERATIONS FOR THE AMERICAN PEOPLE

JUNE 4, 2003.—Referred to the House Calendar and ordered to be printed

Mr. DREIER, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Con. Res. 190]

The Committee on Rules, to whom was referred the concurrent resolution (H. Con. Res. 190) to establish a joint committee to review House and Senate rules, joint rules, and other matters assuring continuing representation and congressional operations for the American people, having considered the same, report favorably thereon, without amendment, and recommend that the concurrent resolution be agreed to.

PURPOSE OF THE RESOLUTION

The purpose of H. Con. Res. 190 is to establish a joint committee to review House and Senate rules, joint rules, and other matters assuring continuing representation and congressional operations for the American people.

SUMMARY OF THE RESOLUTION

H. Con. Res. 190 creates a joint committee to (1) ensure the continuity and authority of Congress during times of crisis, (2) improve congressional procedures necessary for the enactment of measures affecting homeland security during times of crisis, and (3) enhance the ability of each chamber to cooperate effectively with the other body on major and consequential issues related to homeland security.

BACKGROUND AND NEED FOR THE RESOLUTION

Since the terrorist attacks of September 11, 2001, the Nation's perception of our national priorities has changed dramatically. Terrorist attacks on our homeland and the anthrax-laced letters still

19–006

under investigation introduced a new sense of vulnerability to Americans and gave Congress a new imperative to act for the protection of the American people.

Congress' initial response to the acts of terrorism included passage of landmark legislation establishing a new Department of Homeland Security, the most significant governmental reorganization in over fifty years, which President George W. Bush signed into law on November 25, 2002. When the 108th Congress convened, the House created the Select Committee on Homeland Security to oversee the work of the new Department, and the House and Senate Appropriations Committees have reassigned jurisdictions among their subcommittees to allow focus on homeland security issues.

In addition, both the House and the Senate adopted H. Con. Res. 1 which states that the Speaker and the Senate Majority Leader, or their designees, in consultation with the respective minority leaders, "may notify the Members of the House and Senate, respectively, to assemble at a place outside the District of Columbia whenever, in their opinion, the public interest shall warrant it." The purpose of H. Con. Res. 1 is to ensure that someone in each chamber has the authority to convene the House or Senate outside of the District of Columbia in the event of a national catastrophe.

The response of the President and the Congress to terrorism has been substantial and positive. Together, we have provided public officials with a framework for preserving the functions of government, while helping to assure the general public that representative government will continue to function despite terrorist actions. However, more needs to be done.

While the power of the Presidency has been transferred in critical situations on numerous occasions—ranging from war to assassination to impeachement—only two or three times in our nation's history have crises tested the ability of Congress to assemble and conduct its business under extreme circumstances. There is still uncertainty about Congress' ability to act decisively to maintain homeland security while preserving the democratic and representative fabric of our society. Accordingly, Congress should undertake a thorough review of House and Senate rules, joint rules, and other related matters to ensure the functioning of Congress in the event of any catastrophe. H. Con. Res. 190 provides for this review through the establishment of a joint committee that will study how to ensure that the structures, rules and procedures, devices, and lines of communication between the two chambers are effectively organized and coordinated.

The primary goals of the Joint Committee are twofold: (a) to preserve the co-equal stature of the legislative branch so that our nation's representative form of government can perform its constitutional duties during any catastrophe or emergency; and (b) to promote bipartisan and bicameral dialogue about the necessity for rules, joint rules, or other processes to permit timely consideration of vital homeland security matters during times of crisis.

The House and Senate are distinctive bodies, as the Framers intended. They differ in size, constituency, term of office, procedural rules, constitutional prerogatives, and more. Under the Constitution, each chamber has the absolute right to establish its own rules. The joint committee established in this concurrent resolution

would not affect this Constitutional prerogative of each chamber. However, it is vitally important for the general welfare of our nation that the House and Senate can work together in an effective and decisive manner during times of catastrophe—when even the existence of the national government may be at stake. House Concurrent Resolution 190 is an important step toward achieving that goal.

COMMITTEE CONSIDERATION

Rules Committee Chairman David Dreier and Rules Committee Ranking Minority Member Martin Frost introduced House Concurrent Resolution 190 on May 22, 2003. The measure was subsequently referred to the Committee on Rules.

On Wednesday, June 4, 2003, the Rules Subcommittee on Technology and the House held a hearing on House Concurrent Resolution 190 and received testimony from: Hon. David Dreier, Chairman of the Committee on Rules and Hon. Martin Frost, Ranking Minority Member of the Committee on Rules.

On Wednesday, June 4, the Committee on Rules held a markup of the concurrent resolution. The Committee favorably reported House Concurrent Resolution 190 by a voice vote, a quorum being present. During the markup, no amendments were considered.

WRITTEN TESTIMONY OF CONGRESSMAN DAVID DREIER

I. INTRODUCTION

Mr. Chairman, I welcome this opportunity to testify before the Subcommittee today on this historic matter. Only a few times in the past have the House and Senate established bipartisan, bicameral panels to review the structure and functioning of the Congress. Today's hearing is an important step forward because it begins the process for fulfilling one of our most important duties; assuring continuing representation and congressional operations for the American people during times of crisis. Since the terrorist attacks of September 11, 2001, our perception of national priorities has changed dramatically. Terrorist attacks on our homeland and the anthrax-laced letters still under investigation introduced a new sense of vulnerability to Americans and gave Congress a new imperative to act for the protection of the American people.

Congress' initial response to the acts of terrorism included passage of landmark legislation establishing a new Department of Homeland Security, the most significant governmental reorganization in over fifty years, which President Bush signed into law on November 25, 2002. When the 108th Congress convened, the House created the Select Committee on Homeland Security to oversee the work of the new Department, and the House and Senate Appropriations Committees have reassigned jurisdictions among their subcommittees.

Both chambers adopted H. Con. Res. 1 which states that the Speaker and the Senate Majority Leader, or their designees, in consultation with the respective minority leaders, "may notify the Members of the House and Senate, respectively, to assemble at a place outside the District of Columbia whenever, in their opinion, the public interest shall warrant it." The purpose of H. Con. Res. 1 is to ensure that someone in each chamber has the authority to convene the House or Senate outside of the District of Columbia in the event of a national catastrophe.

The response of the President and the Congress to terrorism has been substantial and positive. Together, we have provided public officials with a framework for preserving the functions of government in times of crisis. In addition, our actions have helped to assure the general public that representative government will continue to function despite terrorist actions. But more needs to be done.

While the power of the Presidency has been transferred in critical situations on numerous occasions—ranging from war to assassination to impeachment—only two or three times in our nation's history have crises tested the ability of Congress to assemble and conduct its business under extreme circumstances. The fact is we are still unsure of our ability to act decisively to maintain home-

land security while preserving the democratic and representative fabric of our society. Accordingly, Congress should undertake a thorough review of House and Senate rules, joint rules, and other related matters to ensure the functioning of Congress in the event of a catastrophe.

II. JOINT COMMITTEES' ROLE IN STRENGTHENING CONGRESSIONAL OPERATIONS

The two chambers, of course, do have formal and informal devices to bring Representatives and Senators together, such as conference committees and bicameral leadership meetings. However, these mechanisms for bicameral coordination are typically ad hoc and utilized on an occasional basis, often to address legislative or political dynamics at the time. Congress has no defined structure or formal mechanisms for addressing joint emergency procedures in the aftermath of a catastrophic event.

Passage of this legislation would inaugurate a special joint committee study of ways to ensure that the structures, rules, procedures, and lines of communications between the two chambers are effectively organized and coordinated so the legislative branch can fulfill its important constitutional duties during times of crisis. Specifically, House Concurrent Resolution 190 establishes a committee of 20 members, equally divided by chamber and party. The Speaker and the Senate Majority Leader would appoint the co-chairmen of the joint committee, as well as the other members (after consultation with the respective minority leaders). The joint committee is to issue an interim report by January 31, 2004 and a final report by May 31, 2004.

It is not unusual for Congress to create joint committees to inquire into significant matters of legislative organization and operations. By their very nature, joint panels bring together an array of legislative expertise and experience found in few other congressional settings. A table summarizing major joint committees established during the post-1946 era of Congress is attached to this testimony in Appendix A.

On three prior occasions, Congress has established bipartisan, bicameral panels to conduct comprehensive reviews of its operations. Among the topics considered by these joint panels were the committee system, floor deliberation and scheduling, and cooperation between the House and Senate. These reviews included:

(1) *The 1945 Joint Committee on the Organization of Congress.* The 1945 Joint Committee consisted of 12 members (six Senators and six Representatives, equally divided by party) and was formed to take testimony and make recommendations concerning the structure of congressional committees and other matters. The enormous changes underway at that time—Roosevelt's New Deal policies and the emerging global role of the United States following World War II—precipitated interest in reviewing and strengthening the Congress. The joint committee held three months of hearings and reported nine months later with a wide-ranging list of 37 specific recommendations to improve the structure and efficiency of

Congress,[1] many of which were incorporated into the 1946 Legislative Reorganization Act.[2]

(2) *The 1965 Joint Committee on the Organization of the Congress*. The 1965 Joint Committee also had 12 members (six Senators and six Representatives, equally divided by party). Its mandate was to make recommendations for strengthening congressional operations and improving Congress' relationship with the other branches of government. After 40 hearings, the joint committee reported ten months later with 120 recommended changes for the operation of Congress.[3] Eventually, many of these proposals were included in the Legislative Reorganization Act of 1970.[4]

(3) *The 1993 Joint Committee on the Organization of Congress,* on which I served as co-chairman, was composed of 28 members (14 from the Senate and 14 from the House, equally divided by party). It was formed, in part, to address concerns inside and outside the House and Senate about the effectiveness and public perception of Congress. The scope of its inquiry included:

> the organization and operation of each House of the Congress, and the structure of, and the relationships between, the various standing, special, and select committees of the Congress, the relationship between the two Houses of Congress, and * * * [other matters relating] to the ability of the Senate and the House of Representatives to perform their legislative activities.[5]

The 1993 joint committee held six months of hearings, organized four symposiums on relevant topics, collected extensive survey data from Members and staff, and reviewed over 1,000 letters from citizens written in response to an op-ed article by its co-chairs. Although the 103rd Congress did not act on the joint committee's recommendations, many of its proposals were subsequently adopted by the Republican majority when they assumed control of the House of Representatives in the 104th Congress.[6]

In addition, the Congress created the Joint Study Committee on Budget Control in 1972. The Joint Study Committee reviewed congressional budgetary processes[7] and laid the groundwork for what eventually became the Congressional Budget and Impoundment Control Act of 1974.[8]

III. THE "JOINT COMMITTEE ON CONGRESSIONAL OPERATIONS AND SECURITY"

The Joint Committee proposed by this legislation is an appropriate mechanism to conduct a systematic review of what Congressional procedures, communications, coordination, devices, and leadership are necessary and appropriate to handle national crises. The primary goals of the Joint Committee are twofold: (1) to preserve the co-equal stature of the legislative branch so that our represent-

---

[1] H. Rept. 1675, 79th Congress, 2nd Session (1946).
[2] Act of August 2, 1946, 60 Stat. 812.
[3] S. Rept. 1414, 98th Congress, 2nd Session (1966).
[4] Public Law 91–510, 84 Stat. 1140.
[5] H. Con. Res. 192, 102nd Congress, 2nd Session (1992).
[6] For the rules adopted at the start of the 104th Congress, see Congressional Record, Daily Edition, January 4, 1996, pp. H23–38.
[7] H. Rept. No. 93–147, 93rd Congress, 1st session (1973).
[8] Public Law 93–344, 88 Stat. 297.

ative form of government can perform its constitutional duties during emergencies; and (2) to promote a bipartisan and bicameral dialogue about the necessity of rules, joint rules, or other processes to permit timely consideration of vital homeland security legislation during times of crisis.

Among the specific topics that the Joint Committee could consider are the following:

Continuity of Congress

On September 11th, a group of heroes on board Flight 93 said, "Let's Roll!," stormed the cockpit, and kept the Al-Qaeda terrorists from crashing the aircraft into the Capitol. While that attack was thwarted, the threat to Congress and its leadership, who are in the line of presidential succession, remains very real. Al-Qaeda's failed attempt highlights the importance of planning for the continuity of Congress in the event of a catastrophe. If a major terrorist attack succeeded in killing or incapacitating a large number of Representatives or Senators, it could eliminate the ability of the Congress to act at the very time in which the Nation needs its lawmakers the most.

Under existing legal interpretations, an attack that killed large numbers of House members would present difficult issues regarding what constitutes a legitimate quorum to act and how those deceased members would be replaced in a timely manner. Moreover, an attack that left a large number of members severely injured, but not dead, would raise concerns because no provision in the House or Senate rules, public laws, or the Constitution defines "incapacitation" of Representatives or Senators—or the procedures for their temporary replacement.

These examples are but a few of the many issues which underscore the need for this joint committee. It is of great importance that Congress examine its need for extraordinary rules, procedures, and processes to ensure its continuity and survival in a time of national emergency. To be sure, potential procedural transformations suggested by such a review could be major or minor. However, let me caution those who favor a quick passage of a constitutional amendment on quorums and the replacement of members. As I have discussed with Mr. Robert Michel, our former House Republican Leader and a current member of the Continuity of Government Commission, a constitutional amendment should be a last resort. A Constitutional amendment would be premature until Congress determines that there are no other ways to resolve these issues through procedures, rules, joint rules, or public law. Moreover, I am concerned about the length of time it would take to ratify a Constitutional amendment given the threats that we face. Constitutional amendments require the approval of two-thirds of both the House and the Senate as well as ratification by three-quarters of the states, a process that typically takes a number of years.

Joint rules

From the very first Congress, joint rules have helped govern House and Senate procedures in matters requiring concurrent action. They were printed and distributed in early House and Senate

manuals, and, while their formal adoption lapsed in the 1870's because of a dispute involving the counting of electoral ballots,[9] they continue to facilitate much of the work we do today. For example, while the Constitution accords each chamber power over its rules, it requires bills to be passed in identical form by both chambers prior to enactment without specifying a process. The first joint rule, adopted in 1789, addressed this issue by providing that the chambers could appoint delegations to meet in a conference committee. Fortunately, conference committees continue to be available to us to expedite resolution of our differences on legislation despite the lack of a formally adopted joint rule.

Some of the other joint rules that continue in customary practice of today's Congress include:

(1) "While bills are on their passage between the two Houses they shall be on paper and under the signature of the Secretary of the Clerk of each House, respectively";

(2) "After a bill shall have passed both Houses, it shall be duly enrolled on parchment by the Clerk of the House of Representatives or the Secretary of the Senate, as the bill may have originated in the one or other House, before it shall be represented to the President of the United States"; and

(3) "After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, then by the President of the Senate.".[10]

Beyond these more prosaic elements of bicameral cooperation, however, joint rules also have contained provisions to expedite legislative procedure during national crises. In 1862, for example, a joint rule was established during the Civil War to allow for the immediate and secret consideration of measures at the request of President Lincoln. More recently, joint rules have been incorporated into key resolutions and important statutes passed by the Congress. The House and Senate adopt a joint rule each time they pass the budget resolution. Additionally, a joint rule of the House and Senate is adopted with the passage of each concurrent resolution to adjourn the Congress for more than three days. Both chambers also operate under a joint rule when they count electoral votes.[11] In addition, Congress has passed a number of statutes that have the status of rules of the House and the Senate.[12] The joint committee, if established, should consider whether joint rules or other joint mechanisms can be a useful means during times of cri-

[9] History of the United States House of Representatives, 1789–1994, pp. 271–274 (GPO, 1994). In 1876, a question arose in the Senate on whether the joint rules continued automatically from Congress to Congress or required the concurrence of both chambers at the start of each Congress. The formal adoption of joint rules lapsed then because of member concerns about Joint Rule 22 during the controversial Hayes-Tilden presidential election. Joint Rule 22 contained procedures for counting electoral votes that could have allowed either the House or the Senate to throw out the votes of any state. Although adoption lapsed in 1876, the Congress continued to follow most joint rules. Indeed, for many years after, the House and Senate guides to parliamentary procedure continued to print the joint rules. E.g., Henry H. Smith, Digest and Manual of the Rules and Practice of the House (GPO, 1884) and W.J. McDonald, Constitution of the United States (GPO, 1881).

[10] Asher Hinds, Hinds' Precedents, vol. 4, § 3430, p. 311–12 (GPO, 1907); Hinds', vol. 5 § 6592 (GPO, 1907).

[11] Lewis Deschler, Procedure in the U.S. House of Representatives, 97th Congress (GPO, 1982), p. 81.

[12] See House Manual, p. 1017 et seq. and Congressional disapproval provisions in the Executive Reorganization Act, 5 U.S.C. § 902, the War Powers Resolution, 50 U.S.C. §§ 1544–46, and the National Emergencies Act, 50 U.S.C.

sis for managing inter-chamber relationships and the promotion of bicameral coordination, communication, and consultation.

Consideration of homeland security measures in times of crisis

While a framework for the executive branch's response to terrorism has been put in place with the creation of the Department of Homeland Security and the enactment of other measures, many important issues need to be reviewed with respect to how the Congress would deal with homeland security issues during a catastrophe. The American people do not consider the rules and procedures of the House and the Senate foremost among the factors essential to their security; rather, they simply expect that the Congress will have the foresight to plan and the ability to act decisively in the face of any crisis. Instead of risking that previously unanticipated gaps or procedural obstacles in bicameral relationships might impede decisive yet responsible action, we should begin a careful study of House and Senate rules and procedures to ensure that we are prepared to act quickly in any emergency.

For example, if an attack prevents Congress from enacting all or some of the appropriations measures by the start of the fiscal year, we may want to consider whether it makes sense to have a short-term automatic funding mechanism for government agencies. Similarly, if Congress would need to act from an "undisclosed location," we might want to ensure in advance that special procedures are in place to craft emergency legislation. Finally, while the Senate, as a continuing body, has rules that endure from one Congress to the next unless they are changed or modified, the House has to adopt its rules anew at the start of each new Congress. This requirement may present issues that should be considered by the joint committee, for if a catastrophe occurs prior to the convening of a new Congress, the House might not be able to organize, vote, or to adopt rules of procedure for some time.

I am not wedded to any specific ideas or solutions. Rather, I am committed to trying to work with all members, regardless of party affiliation, to work out the proper mechanisms to have in place should disaster strike.

IV. CONCLUSION

The House and Senate are distinctive bodies, as the Framers intended. They differ in size, constituency, term of office, procedural rules, constitutional prerogatives, and more. Under the Constitution, each chamber has the absolute right to establish its own rules. The joint committee, if established, would not affect this Constitutional prerogative of each chamber. However, it is vitally important for the general welfare of our nation that the House and Senate can work together in an effective manner during times of catastrophe, when even the existence of the national government may be at stake. H. Con. Res. 190 is an important step toward achieving that goal.

In conclusion, this effort can only succeed if it is both bicameral and bipartisan. I look forward to working with members and leaders of each chamber to ensure its passage.

Appendix A
-- 1 --

Joint Committees

Committees	Jurisdiction and Functions
Atomic Energy (18 mbrs) Established 1946; 42 USC § 2251 House mbrs: 9 Senate mbrs: 9 Terminated Jan. 4, 1977	Development, use, and control of atomic energy; to report legislation and make recommendations within its jurisdiction; legislative jurisdiction abolished 1977; 95–1, H. Res. 5
Congressional Operations (10 mbrs) Established 1970; 2 USC §§ 411–417 House mbrs: 5 Senate mbrs: 5 Inactive since 94th Cong.; Select Committee on Congressional Operations created, 95–1, H. Res. 420	Identification of court proceedings affecting Congress; organization and operation of the Congress; supervision of the Office of Placement and Management; no legislative jurisdiction
Defense Production (10 mbrs) Established 1950; 50 USC App § 2161 House mbrs: 5 Senate mbrs: 5 Terminated Mar. 1, 1992; no appointments after Sept. 30, 1978	Review of programs established by the Defense Production Act of 1950; Federal emergency preparedness and mobilization policy; integrity of defense contracts and the procurement process; to report to the House and Senate on its studies, with recommendations
Economic (20 mbrs) Established 1946; 15 USC § 1021 House mbrs: 10 Senate mbrs: 10 (*Manual* § 1108)	Economic Report by the President; means of promoting national policy on employment; short-term and medium-term economic goals; to report to the House and Senate (by March 1) and to each Budget Committee (by March 15)
Housing (14 mbrs) Established 1947; H. Con. Res. 104 House mbrs: 7 Senate mbrs: 7 Terminated 80th Cong.	Housing needs in U.S.; building material shortages; building costs; building codes and zoning laws; housing loans and insurance; veterans' preferences; findings to be reported to the House and Senate
Internal Revenue Taxation (10 mbrs) Established 1926; 26 USC § 8002 House mbrs: 5 Senate mbrs: 5 (*Manual* § 1109)	Operation and effects of Federal system of internal revenue taxation; to report to the Committee on Ways and Means, and, in its discretion, directly to the House
Library (10 mbrs) Established 1806; 2 USC § 132b House mbrs: 5 Senate mbrs: 5 (*Manual* § 1110)	Management and expansion of the Library of Congress; rules and regulations for the government of the Library; development of Botanic Garden; gifts for the benefit of the Library; statues and other works of art in the Capitol

Organization of Congress (24 mbrs) Two separate joint committees Established 1965; S. Con. Res. 2 Established 1992; H. Con. Res. 192; (Reestablished Pub. L. No. 102–392) House mbrs: 12 Senate mbrs: 12 Terminated Dec. 31, 1967 Terminated Dec. 31, 1993	Organization and operation of Congress; relationship between the two Houses and between the Congress and other branches of government; committees; to report to the House and Senate
Printing (10 mbrs) Established 1846; 44 USC § 901 House mbrs: 5 Senate mbrs: 5 (*Manual* § 1111)	Inefficiencies or waste in the printing, binding, and distribution of government publications; arrangement and style of the *Congressional Record*; printing of the legislative program for each day; listing of committee meetings and hearings
Washington Metropolitan Problems Established 1957; H. Con. Res. 172 Terminated 86th Cong.	Growth and expansion of the District of Columbia and its metropolitan area; effectiveness of agencies and instrumentalities concerned therewith; to report to the House and Senate

STATEMENT OF HON. MARTIN FROST

Mr. Chairman and Mr. McGovern, I appreciate your calling this meeting of the Subcommittee today so that we can begin the process of creating a Joint Committee on the Continuity of Congress. I am pleased to join with Chairman Dreier in sponsoring this resolution because I believe this is a very serious matter. In the event that a catastrophic attack was successfully launched against the Capitol or any other location where a large number of Members of the House of Representatives were gathered, the ability to assure the continuity of our government could affect the effective functioning of the government but might well affect the stability of the United States and its citizens.

September 11, 2001 made clear just how vulnerable this country is to terrorist attacks. In the ensuing months, there have been significant changes to the security procedures in the Capitol complex all in the hope that the increased security will protect the staff and Members who work here, as well as the thousands of visitors who every year come to our offices and to the Capitol itself. But in spite of this increased security, we are still vulnerable—if only because this building is seen as the symbol and seat of our democracy to the rest of the world.

That means we have to prepare for the unthinkable. We have to answer the question: How would the House function in the aftermath of such an attack?

Last May, Speaker Hastert and Minority Leader Gephardt asked Chris Cox and me to co-chair a bipartisan Continuity of Congress Working Group which was charged with the responsibility of finding ways that the legislative branch—specifically the House of Representatives—could continue to function in the event that a terrorist attack or other catastrophe might kill or incapacitate a large number of Members.

Over a period of six months, the Working Group held eight meetings. At those meetings we discussed—on a non-partisan and collegial basis—the remedies that might exist or would need to be created to allow the House to continue to function in just such a situation. These discussions were substantive. We called on the Parliamentarian of the House, Charles Johnson and his staff, on former staff—including the Committee's staff director, Mr. Pitts, on the Congressional Research Service, other Members, and outside experts on constitutional law and the functioning of Congress. We reviewed proposed Constitutional amendments. We did not, however, recommend any Constitutional changes because we felt it was necessary for the Committee of jurisdiction to take up the complex issues relating to amending the Constitution to provide for the continuity of Congress.

We did recommend three simple changes to the Rules of the House that will go a long way to resolving some of the problems

relating to a diminished number of Representatives who might present themselves to the Speaker following a catastrophic event. They were included in the Rules package for the 108th Congress. Those amendments provided:

(1) Codification of the process by which the Speaker certifies the death of a House Member in order to reduce the whole number of the House for purposes of establishing a quorum;

(2) Allowing the Speaker to accelerate or postpone the convening of the House in the event of a declared emergency; and

(3) Authorization of an individual other than the Speaker to reconvene the House in the event of a catastrophe resulting in the death of the Speaker.

We understood that the complexity of the issues surrounding the continued functioning of the House in such an instance required more study and more substantive discussion. Every time we thought we had come to the end of the discussion of "what ifs", we found one more question that led us to rethink many of the conclusions we had reached. The fact is, there are no easy answers because we are talking about the possibility of an event that the founding fathers could never have imagined. They created the House of Representatives as the arm of the government that is closest to the people; and in doing so, they provided for direct election. To change that is an undoing of over 200 years of history and precedent and to do so requires careful and thoughtful discussion and deliberation.

The Joint Committee we have proposed will continue the discussion of the Cox-Frost Working Group. We have included the Senate in this resolution in order to assure that any changes we make will mesh with the rules and regulations of the Senate. This is about Continuity of Government—not just the House. I believe the House's ability to reconstitute itself is the thorniest problem in this mix, but it is also important that what we do is coordinated with the Senate to assure that there will indeed be continuity of Congress.

In closing, I would like to add that this is not a partisan issue. This is an issue that affects each and every American and should be handled in a serious way, a way that avoids partisan rancor. We did that last year and I pledge that my participation in this Joint Committee, if the House and Senate agree to create it, will be nonpartisan—I will participate as an American who wishes to ensure that our Democracy—the beacon of freedom to the rest of the world—will continue to function effectively on behalf of the American people.

STATEMENT OF CONGRESSMAN JOHN LINDER

I am pleased to convene this hearing of the Subcommittee on Technology and the House. We are here to receive testimony from the sponsors of a proposal to establish a joint committee to review House and Senate rules, joint rules, and additional issues of importance pertaining to the continuity and security of congressional operations.

This Subcommittee in the past has held hearings on the deliberative nature of the Congress, congressional oversight of the executive branch and issues of internal procedures affecting legislative cooperation. While these previous hearings all focused on processes and procedures of the House of Representatives, any review of our parliamentary rules and procedures must now be evaluated in a post-September 11th atmosphere that incorporates once implausible circumstances into how the legislative branch will operate.

Following the horrendous acts of terrorism that were perpetrated on the American people on September 11, America demonstrated its commitment to ensuring that terrorism would not undermine liberty and freedom. Our nation also realized that it had entered a new era in which liberty and freedom would be under attack from a new kind of enemy, and that we would have an obligation to act for the protection of our citizens and the institutions that govern them.

John Jay in Federalist No. 3 stated that, "Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be the first." In terms of providing for the safety of the nation, this obligation must include continuity of operations. The executive branch has made contingency plans so that, in a dire emergency, it would be able to continue functioning on behalf of the American people. This is the prudent thing to do. The House in its opening day rules package included significant positive rules changes stemming from the recommendations made by the bipartisan Continuity of Congress Task Force. These first efforts were designed to help ensure that appropriate institutional mechanisms were in place to respond to an emergency situation. The legislative branch is now continuing to devote its time and energy in a joint effort between the two chambers to making contingency plans for the continuity of its own operations in the event of a catastrophic disaster.

It is imperative that the Federal government be in the most effective position to protect the American public, and the most visible sign of our nation meeting this obligation has revealed itself in our efforts to find and eliminate enemies at home and abroad. But it is also our obligation at home to ensure the continuity of our representational government. With that objective as our goal, this Subcommittee and the Committee on Rules intends to assess the rules, joint rules, and processes and procedures to ensure that they

have been adapted to deal with any contingency that could affect the continuity and security of Congressional operations during a time of crisis.

The Constitution of the United States declares that the legislative branch has the responsibility to appropriate funds to keep the government running properly, declare war against hostile adversaries, elect a Speaker of the House and confirm Cabinet nominees and Supreme Court nominees. These comprise just a few of the powers within the framework of our representative government that has worked so well for over two hundred years. But in light of the critical nature of these considerable responsibilities, the time is right to reevaluate how procedural requirements could affect the manner in which these legislative duties would be conducted in the House and Senate in an emergency situation.

The Rules Committee members before us today—the Chairman of the Committee on Rules and our Ranking Minority Member—will present the Subcommittee with a proposal that could put the wheels in motion for an internal assessment to help ensure the continuity and security of congressional operations. This proposal for a joint committee represents a serious step in the right direction for modernizing Congressional procedures and elevating parliamentary preparedness, and having the House and Senate think about what needs to be done to ensure the legislative branch's continued viability in the face of any emergency situation.

SECTION-BY-SECTION ANALYSIS OF THE RESOLUTION

1. Whereases.

2. Section (a) of H. Con. Res. 190 establishes who will constitute the joint committee, with 10 Members of the House and 10 Members of the Senate.

3. Section (b) of H. Con. Res. 190 discusses the scope of inquiry for the joint committee as:

a. Ensuring the continuity and authority of Congress during times of crisis;

b. Improving congressional procedures necessary for the enactment of measures affecting homeland security during times of crisis; and

c. Enhancing the ability or each chamber to cooperate effectively with the other body on major and consequential issues related to homeland security.

4. Section (b) of H. Con. Res. 190 also sets parameters on the recommendation(s) of the joint committee, including:

a. No recommendation may be made without a majority vote of members;

b. Any recommendation that affects only the House or the Senate shall be voted upon only by members from that body, and, if adopted by those members, it shall be considered to be adopted by the entire joint committee;

c. Reports of the joint committee will go to the Speaker and Senate Majority Leader, with an interim report due by Jan. 31, 2004 and final by May 31, 2004.

5. Section (c) terminates the joint committee after its final report on May 31, 2004.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

Committee votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter, the total number of votes for and against, and the names of the Members voting for and against. No rollcall votes were requested during consideration of H. Con. Res. 190.

Congressional Budget Office estimates

Clause 3(c)(3) of rule XIII requires each committee to include a estimate and comparison prepared by the Director of the Congressional Budget Office, pursuant to section 402 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. No estimate and comparison was received from the Congressional Budget Office.

Oversight findings

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

General performance goals

In accordance with clause (3)(c)(4) of House Rule XIII, the goal of H. Con. Res. 190 is to thoroughly assess, study, analyze and review the rules, joint rules, other matters assuring continuing representation and congressional operations for the American people. H. Con. Res. 190 requires the joint committee to issue an interim report on the results of its study and review by no later than January 31, 2004 and a final report on the same by not later than May 31, 2004.

Views of committee members

Clause 2(l) of rule XI requires each committee to afford a two day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although this requirement does not apply to the Committee, the Committee always makes the maximum effort to provide its members with such an opportunity. At the time of approval of the concurrent resolution no member of the committee gave notice of intent to file supplemental, minority or additional views for inclusion in the report.

○