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ONE HUNDRED EIGHTH CONGRESS

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February 2, 2005

The Honorable Tom Davis
 Chairman
 Committee on Government Reform
 2157 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Davis:

In accordance with clause 2(d)(1) of rule X of the Rules of the House, please find enclosed a copy of the Oversight Plan for the Committee on Rules for the 109th Congress, as adopted by the Committee by voice vote on February 1, 2005.

Please feel free to contact me if you have any questions.

Sincerely,

David Dreier
 Chairman

Enclosure

**OVERSIGHT PLAN OF THE
HOUSE COMMITTEE ON RULES
FOR THE 109TH CONGRESS
ADOPTED FEBRUARY 1, 2005**

Committee Action

Pursuant to clause 2(d) of House rule X, the Committee on Rules met in public session on February 1, 2005. A quorum being present, the Committee adopted by a non-record vote the following oversight plan for the 109th Congress for submission to the Committee on House Administration and the Committee on Government Reform in accordance with the rule.

I. Background

The Committee on Rules has existed as part of the House committee structure since the First Congress, when it was established in 1789 as a select committee. The essential portion of the present jurisdiction of the Committee is set forth in clause 1(n) of rule X, which grants the Committee jurisdiction over:

- (1) Rules and joint rules (other than those relating to the Code of Conduct) and the order of business of the House.
- (2) Recesses and final adjournments of Congress.

In addition, clause 3(j) of rule X assigns to the Committee special oversight responsibility over the congressional budget process.

The Committee on Rules always has been at the forefront of efforts to reform the process and procedures of the House to improve the effectiveness of the institution. For example, the Committee considered

and reported the Congressional Budget Act of 1974, which created the congressional budget process and a mechanism for disapproving or approving impoundment and rescission proposals of the President.

Additionally, the Committee has played the lead role in putting forth substantive changes to the rules of the House that occur at the beginning of each Congress. Such changes have included streamlining the committee system, opening committee meetings to the public and press, and modernizing the rules of the House to make them more understandable.

Some of the substantive changes to House rules adopted on the opening day of the 109th Congress include:

- Requiring committees to review matters within their jurisdiction to bring to light duplicative government programs as part of their oversight planning at the beginning of each Congress.
- Making permanent the ability to consider suspensions on Wednesdays, after the very successful experiment with suspensions on Wednesdays during the 108th Congress.
- Providing for the Continuity of Congress by allowing the House to function in situations where large numbers of Members are incapacitated.
- Eliminating the Corrections Calendar, which while originally intended to make it easier to consider legislation making corrections to outright errors in laws, turned out to be too cumbersome as compared to procedures already available (e.g. the suspension process).
- Allowing for Members to make references to the Senate and its members, so long as those references are confined to the question under debate and that they avoid personality. This brings the House rules closer in line with the Senate rules on these matters.

- Clarifying the ethics process to allow Members on officially connected travel to bring a family member other than a spouse or child with the Member at the sponsor's expense, to conform the rules to current law regarding the use of campaign funds to pay for certain official expenses (e.g. cell phones), to conform the rules to current law with regard to the 90-day pre-election limit on franked mail, to provide Members with the right to counsel of their choosing at ethics proceedings, and to provide due process and the presumption of innocence for Members in all ethics matters.
- Creating the standing Committee on Homeland Security with legislative and oversight jurisdiction over national homeland security policy.

During the 109th Congress, the Committee will continue to work proactively on its legislative and oversight responsibilities. This will include a number of hearings and meetings by the Subcommittee on Legislative and Budget Process, the Subcommittee on Rules and Organization of the House, and the newly formed Task Force on the Congress as an Institution.

II. Major Areas of Oversight in the 109th Congress

Continuity of Congress

During the 108th Congress, the Committee on Rules played the lead role in the House's consideration of how to assure the American people that their democracy would continue in the face of any crisis or catastrophe. This effort began in early 2003 when the Committee, on a bipartisan basis, introduced H. Con. Res. 190 to create a joint committee to study the Continuity of Congress. The measure was referred solely to the Committee on Rules, and after mark-up, it was reported to the House favorably. All 13 Members of the Committee were cosponsors of the

legislation, and the House adopted H. Con. Res. 190 on June 5, 2003, by voice vote.

The scope of the joint committee's inquiry was: (1) Ensuring the continuity and authority of Congress during times of crisis; (2) Improving congressional procedures necessary for the enactment of measures affecting homeland security during times of crisis; and (3) Enhancing the ability of each chamber to cooperate effectively with the other body on major and consequential issues related to homeland security. Unfortunately, the Senate did not act upon H. Con. Res. 190 prior to the sine die adjournment of the 108th Congress.

Later in the 108th Congress, the Committee on Rules began an intensive, bipartisan inquiry into issues associated with the incapacitation of large numbers of Members. As Chairman Dreier of the Committee on Rules said, "It's possible that a terrorist attack could result in not just deaths, but incapacitation as well. How does this affect our quorum? What is the standard for incapacitation? Can adjustments to deal with these possibilities be made within our own rules?" Then-Committee on Rules Ranking Member Mr. Frost concurred in the need for a full inquiry when he said, "The issues surrounding the incapacitation of large numbers of Members in the House of Representatives present some of the thorniest questions the Congress must address. This is an issue never contemplated by the Framers, but it is an issue that is very relevant to the House today."

The Committee held an original jurisdiction hearing on these issues on April 29, 2004, and received testimony from the Parliamentarian of the House, from the former Solicitor General of the United States, and from the Attending Physician to Congress. The primary focus of this hearing was to consider the majority quorum requirement in the context of a catastrophe resulting in the mass incapacitation, but not death, of Members. Since incapacitated Members are still alive, they remain a part of the quorum calculation. Thus, if 225 Members were incapacitated, the whole number of the House would remain unchanged, i.e. 435. The number required for quorum would remain 218. But only 210 Members would be available to

vote. The House could be unable to act if a roll call vote revealed the absence of enough Members to constitute a quorum for business.

The hearing considered as a threshold matter whether the Constitution must be amended to deal with incapacitation since it is the Constitution that sets the majority quorum requirement. Testimony at the hearing provided a nuanced answer to this question, with those testifying acknowledging a need for the House to act on the issue of mass incapacitation now through amending its rules, while preserving the longer term question on the amendment of the Constitution. As Walter Dellinger, constitutional scholar and former Solicitor General of the United States, testified:

“It is simply inconceivable that a Constitution established to ‘provide for the common defense’ and ‘promote the general Welfare’ would leave the nation unable to act in precisely the moment of greatest peril. No constitutional amendment is required to enact the proposed rule change because the Constitution as drafted permits the Congress to ensure the preservation of government.”

The Members participating in the hearing also considered a proposed rule change prepared by the Committee’s majority staff. This proposal became the framework for a number of subsequent discussions on a bipartisan basis with both staff and Members. A number of suggestions from the minority were incorporated into the mass incapacitation framework. In its rules package for the 109th Congress, the House adopted the provisional quorum rule to address the mass incapacitation of Members (clause 5(c) of rule XX).

Although the House has adopted a rule to address the mass incapacitation of Members, the inquiry of the Committee on Rules on the Continuity of Congress is far from over. The Chairman of the Committee on Rules, Mr. Dreier, during the floor debate of H. Res. 5 (the rules package) on January 4, 2005, announced that:

“The Committee on Rules intends to conduct further examination of the best way for the House to assure a continuity of government during a national emergency, and it is our hope that as we proceed with this work that further discussions will take place with the Members of that very distinguished panel, the Continuity Commission, which included our former colleague Senator Simpson, and Speakers Foley and Gingrich and former minority leader Bob Michel, Leon Panetta, [and] Kweisi Mfume”

Jurisdiction to reflect the 21st Century

The Committee on Rules has always played an integral role in modernizing the rules of the House, including its rules on jurisdiction. However, since their codification in 1946, House jurisdictions have been modified only infrequently.

Beginning in the 104th Congress, the House streamlined what was considered to be a bloated and ineffective committee system. The opening day rules package for the 104th Congress abolished three full committees (Committees on Post Office and Civil Service, District of Columbia, and Merchant Marine and Fisheries) and transferred their jurisdictions to other remaining committees. The rules package also gave the Budget Committee shared legislative jurisdiction over certain budgetary legislation, and limited the number of subcommittees each committee was allowed to have. In the 107th Congress, the trend toward jurisdictional consolidation continued in the opening day rules package with the establishment of a new Committee on Financial Services.

In the 108th Congress, the opening day rules package (H. Res. 5) included a separate order establishing the Select Committee on Homeland Security. As part of its establishment, the Select Committee was charged with conducting a thorough and complete study of the operation and

implementation of the rules of the House, including rule X, with respect to the issue of homeland security, and to submit its recommendations to the Committee on Rules by September 30, 2004.

At the close of the 108th Congress and the beginning of the 109th Congress, the Committee on Rules, under the aegis of the Speaker, worked with all of the existing committees and with the Select Committee on Homeland Security to craft a jurisdiction for a new standing committee. As Mr. Dreier, Chairman of the Committee on Rules, said in debate about the creation of the new committee:

“Over the past 3 years, the Congress has asked the American people to accept change in countless ways. We have mandated change at the Federal, State and local levels. We have asked for change from our allies and forced change upon our enemies. . . . This change in House rule X, which governs the committees and their legislative jurisdictions, is a delicately crafted architecture. It creates a primary committee while recognizing the other legitimate oversight roles of existing committees. We envision a system of purposeful redundancy. By that, we mean more than one level of oversight and an atmosphere in which the competition of ideas is encouraged.”

On January 4th, 2005, the House created the Committee on Homeland Security as a part of its adoption of the rules package (H. Res. 5).

During the balance of the 109th Congress, the Committee on Rules will continue to review proposals to streamline the committee system and increase effective oversight. Fragmented jurisdictions, differences in jurisdiction between House and Senate committees, the budget and appropriations process, and the oversight process are ongoing areas of concern for the Committee. The House has at its disposal several different mechanisms to deal with important national issues from both a legislative and oversight standpoint. The Committee will continue to explore various

options available to the House in an effort to ensure that these important national issues are addressed in the most effective way possible.

Budget Process Reform

Major portions of the Congressional Budget Act of 1974 (P.L. 93-344), were enacted as an exercise of the rule making power of the House and Senate. Therefore, proposals to amend that Act, as well as special order of business resolutions waiving provisions of that Act, are within the jurisdiction of the Committee on Rules. Propositions to change the rules of the House, to create committees, and to direct committees to undertake certain investigations also fall within the Committee's jurisdiction.

The Rules Committee has worked for several years to improve the cumbersome and antiquated congressional budget process. Among the chief criticisms of the existing budget process are its frequent failure to produce timely budget and appropriations decisions, its complexity, the lack of accountability for the fiscal decisions it fosters, the low level of public confidence it inspires and the weakness of existing enforcement mechanisms. According to the Government Accountability Office (GAO, formerly known as the General Accounting Office), Executive branch agencies find the budget process to be burdensome and time-consuming, and Members of Congress find it too lengthy and ineffective.

The budget process reached a new low during the 107th Congress with the Senate failing to approve a concurrent resolution on the budget and the Congress failing to enact eleven of the thirteen appropriations bills by the close of the 107th Congress. Unfortunately, similar results occurred in the 108th Congress.

However, the 108th Congress was marked by an escalating interest in budget process reform and enforcement proposals. This was due, in part, to it being the 30-year anniversary of the Congressional Budget Act of 1974. The Congressional Budget Act established the statutory basis for a congressional budget process and provides for the annual adoption of a

concurrent resolution on the budget as a mechanism to guide and enforce congressional budgetary decision-making.

The 108th Congress saw a litany of budget process reform proposals introduced on a wide variety of issues: budget enforcement mechanisms (statutory discretionary spending limits and pay-as-you-go (PAYGO) requirements), dynamic scoring, biennial budgeting, and aggregate budgeting. All of these proposals attempted to address what their sponsors viewed as weaknesses in the current system.

On March 11, 2004, the Subcommittee on Legislative and Budget Process held a hearing to assess the effectiveness of the current budget process and discuss legislative proposals introduced in the 108th Congress to reform the budget process. The Subcommittee received testimony from Messrs. Hensarling, Ryan of Wisconsin, Chocola, Stenholm, Hill, Kirk, Hastings of Washington, and Castle; and from Josh Bolten, Director of the Office of Management and Budget.

Members of Congress and the Office of Management and Budget testified on: the Spending Control Act of 2004 (H.R. 3973) introduced by Mr. Nussle; the Family Budget Protection Act of 2004 (H.R. 3800) introduced by Mr. Hensarling; the Assuring Fiscal Honesty and Accountability Act of 2003 (H.R. 3995) introduced by Mr. Hill; the Deficit Control Act of 2004 (H.R. 3925) introduced by Mr. Kirk; and the Bush Administration's Spending Control Act of 2004 as outlined in the Fiscal Year (FY) 2005 Budget of the U.S. Government and later transmitted to Congress by the Office of Management and Budget on April 2, 2004. Each of these bills, except for H.R. 3973, were referred to the Committee on Rules, the Committee on Budget, and in some cases the Committees on Ways and Means and Government Reform. H.R. 3973 was referred solely to the Committee on the Budget.

On March 23, 2004, the Subcommittee on Legislative and Budget Process continued its hearing and asked experts on the budget process to comment on each of the legislative issues that were discussed in the

preceding Subcommittee hearing. The Subcommittee received testimony from Douglas Holtz-Eakin, Director, Congressional Budget Office; David M. Walker, Comptroller General of the United States, Government Accountability Office (formerly the General Accounting Office); Dr. John Berthoud, President, National Taxpayers Union, Stanley Collender, General Manager, Financial Dynamics Business Communications; and Richard May, Legislative Consultant, Brownstein Hyatt and Farber.

During the 109th Congress the Rules Committee will continue to review budget enforcement mechanisms, a key aspect of budget process reform. Budget enforcement procedures were first adopted as part of the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as Gramm-Rudman-Hollings). As amended by the Budget Enforcement Act of 1990, the Act provides two separate enforcement mechanisms: (1) spending caps, designed to limit discretionary spending to a designated level; and (2) the PAYGO process, designed to limit changes in the level of revenues and direct spending by new legislation. In both cases, the mechanism is enforced during congressional consideration of budgetary legislation and by a Presidential sequester order after the end of a congressional session. Both of these mechanisms expired at the end of FY 2002.

On June 23, 2004, Budget Committee Chairman Mr. Nussle introduced the Spending Control Act of 2004 (H.R. 4663). The bill would have established discretionary spending limits for FY 2005 through FY 2009 and extend PAYGO requirements through FY 2009 for direct spending.

On June 23, 2004, the Rules Committee granted H.R. 4663 a structured rule. Several amendments were made in order and offered during the course of debate, including:

- An amendment to establish a Federal Sunset Commission to review all federal agencies and programs for their efficiency, effectiveness, redundancy, and need -- adopted by a vote of 272-140.

- An amendment that sought to replace the current 20 budget functions in the budget process with a one-page budget divided into five spending categories -- defeated by a vote of 126-290.
- An amendment that sought to remove the requirement that 20 functional categories be included in the annual budget resolution and grant the Budget Committee the discretion to include such categories as they deem appropriate -- defeated by a vote of 185-230.
- An amendment that sought to impose a cap on the growth of mandatory spending whereby mandatory spending would grow by the Consumer Price Index, or the program inflator plus new enrollees -- defeated by a vote of 96-317.
- An amendment that sought to provide for an automatic continuing appropriations process in the event that a regular appropriations bill or joint resolution making continuing appropriations for a fiscal year has not been enacted into law -- defeated by a vote of 111-304.
- An amendment requiring the Congressional Budget Office to prepare an annual report that compares budgeted entitlement spending to actual entitlement spending for the preceding fiscal year -- defeated by a vote of 289-121.
- An amendment that sought to change the current non-binding budget resolution into a joint resolution that if signed by the President would have the force of law -- defeated by a vote of 97-312.
- An amendment that sought to establish a Budget Protection Mandatory Account and a Budget Protection Discretionary Account to allow Congress to target spending and redirect that

spending toward deficit reduction or tax relief at the end of the year – defeated by a vote of 137-272.

- An amendment that sought to provide an enhanced rescission process for the President to propose to Congress the elimination of wasteful spending identified in appropriations bills – defeated by a vote of 174-273.

In addition, the Budget Enforcement Act of 2004, H.R. 3800, the Family Budget Protection Act of 2004, and H.R. 3925, the Deficit Control Act of 2004 were also offered as amendments in the nature of substitutes to H.R. 4663 and were defeated. The Spending Control Act of 2004 (H.R. 4663) failed to garner enough support to pass the House and was defeated on June 24, 2004 by a vote of 146 – 268.

The effort to reform the existing congressional budget process is certainly not new. Ever since the inception of the Congressional Budget Act of 1974, proposals for modifying the procedures governing the consideration by the Congress of the nation's spending and revenue plans have been plentiful. In previous Congresses, modifications to the budget process have generally occurred as part of reconciliation legislation. Additionally, the House has from time to time considered high profile single-issue changes to the process, most notably in recent years were the Line Item Veto Act (P.L. 104-130), the Unfunded Mandates Reform Act (P.L. 104-4), the Deficit Reduction Lock-Box Act (H.R. 1162, H.Rept. 104-205), and proposals to enact an automatic continuing resolution mechanism.

In accordance with its special oversight authority under rule X, the Committee on Rules looks forward to further review of the budget process with the hopes of eliciting bipartisan recommendations for how best to increase efficiency, improve accountability, strengthen enforcement and in the end provide an appropriate framework for the important policy decisions that lie ahead.

In addition to extending or establishing new enforcement mechanisms, the Rules Committee will continue to study the framework of the fundamental concepts and accounting principles that underlie our annual budget deliberations. These include, but are not limited to, an examination into alternatives to the current budget function framework, the concept of economic assumptions in the budget process and particularly on what criteria those assumptions are based, emergency spending limitations, and enhanced rescissions.

A top priority of the Rules Committee will be to establish a joint committee on budget process reform. The Committee acknowledges the necessity of a joint effort of both the House and Senate in order to effectively implement any reform in the congressional budget process.

Biennial Budgeting

While the Rules Committee's work has focused on a host of budget process reforms, much attention has been concentrated on biennial budgeting as a viable alternative to the current system. The current budget process is overly repetitive, inefficient and bureaucratic, and filled with time-consuming budget votes. Effective oversight and management of federal programs gets crowded out.

The annual process of developing budgets and justifications has kept federal agencies on a perpetual budget cycle treadmill, leaving little time to step back and review the management and effectiveness of the programs they run. Executing an annual budget requires nearly three years of combined effort by the Congress and the Administration. The federal government expends an enormous amount of effort to prepare, review, submit and ultimately legislate the budget.

With regard to the competition for Members' time and attention, as well as floor time, the annual budget process places great constraints on the workings of Congress and its committees. As a result, the authorization process has suffered - leaving large portions of the discretionary federal

budget unauthorized each year. The programs which receive taxpayers' dollars to function each year are not receiving the careful scrutiny they should get from the committees in Congress with the greatest expertise. Every year the Congressional Budget Office (CBO) generates a thick report identifying the programs that are operating without current authorization. In FY 2001, \$112 billion in appropriations were provided for 112 federal programs whose authorizations had expired.

Proponents of biennial budgeting cite all of these trends and facts as overwhelming arguments in favor of making a fundamental change in the way the federal budget is developed and implemented. During the 106th Congress, no less than four biennial budgeting bills were introduced in the House of Representatives. Each of these bills were referred to the Committee on Rules and the Committee on the Budget.

In addition, 245 Members signed onto a sense of the House resolution (H.Res. 396) calling for the enactment of a biennial budget process in the second session of the 106th Congress. Accordingly, the Committee held a series of lengthy hearings to examine proposals from various Members of Congress, the Executive Branch, and outside experts on establishing a two-year budget and appropriations cycle in an effort to develop consensus legislation that would streamline the budget process, enhance programmatic oversight, strengthen the management of government programs and bureaucracies, and reform Congress.

These hearings laid the groundwork for a bipartisan biennial budgeting amendment during floor consideration of H.R. 853, the Comprehensive Budget Process Reform Act. This amendment was narrowly defeated on May 16, 2000, by a vote of 201 to 217.

President George W. Bush, while Governor of Texas, experienced the benefits of biennial budgeting and made it part of his election platform in 2000 as a tool to promote long-range planning and increase off-year oversight. Since being elected, he has consistently addressed biennial budgeting in his annual budget submissions to Congress.

During the 107th Congress, the Subcommittee on Legislative and Budget Process held a hearing on H.R. 981, the Budget Responsibility and Efficiency Act of 2001, and other proposals to establish a two-year budget and appropriations cycle. On August 3, 2001, the Budget Committee reported a substitute version of H.R. 981 by voice vote. The Budget Committee's version would have created a Commission on Federal Budget concepts to study the idea of biennial budgeting, among other items. On November 1, 2001, the Rules Committee favorably reported by voice vote H.R. 981, which would have established a two-year budgeting and appropriations cycle. H.R. 981 was not considered by the full House prior to the adjournment of the 107th Congress.

As previously stated, there was considerable attention given to budget process reform during the 108th Congress. Biennial budgeting was part of the discussion, but never took center stage during the debate. During the 109th Congress, the Committee intends to reexamine the benefits of a biennial budget, and will focus on biennial budgeting juxtaposed with annual and biennial appropriations. The Committee intends to work closely with the Administration and the Budget Committee to reform the budget process.

Dynamic Scoring

As part of the opening day rules package adopted for the 108th Congress, the House adopted a new requirement that the Committee on Ways and Means include in reports on measures amending the Internal Revenue Code of 1986 an analysis by the Joint Tax Committee on the macroeconomic (behavioral) impact of such legislation. This requirement is limited, however, as the Committee is not required to include such analysis if the Joint Tax Committee certifies that such analysis is not calculable.

Because of the great influence that estimates of revenue and spending changes have over whether a proposal is adopted, current federal estimating conventions that are used to determine the budgetary impacts

of proposed policy changes have been under scrutiny for some time. In the 107th Congress, the Rules Subcommittee on Legislative and Budget Process held a hearing on the estimating conventions as currently applied by the CBO and the Office of Management and Budget. This hearing demonstrated that while current estimating models take into account a number of behavioral reactions to tax and spending changes, these models are limited in their inclusion of feedback effects.

During the 109th Congress, the Committee will continue to investigate the issues and the changes, if any, that need to be made to ensure more accurate revenue and expenditure forecasting by further evaluating current estimating models. As part of its oversight function, the Committee intends to review the dynamic scoring analyses included in tax proposals (clause 3(h), rule XIII).

III. Additional Areas of Committee Oversight in the 109th Congress

Unauthorized Appropriations

For a number of years, unauthorized appropriations have been of concern to the Committee. The amounts involved are not insignificant. For example, according to a January 2002 CBO report entitled "Unauthorized Appropriations and Expiring Authorizations," Congress appropriated over \$91 billion to unauthorized federal programs in FY 2002.

In an effort to bring greater attention to this problem, the opening day rules package for the 107th Congress amended clause 3(f)(1) of rule XIII to expand the reporting requirements for unauthorized appropriations. These requirements include: a statement of the last year for which the expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

The CBO predicts that authorizations expiring this year will total approximately \$526 billion. The Rules Committee will continue to examine additional proposals to encourage committees to report authorizing legislation prior to the enactment of the regular appropriation bills.

Impact of New Information Technologies on the House

By constitutional design, Congress is usually a slow-moving institution, and the process of consensus is often messy and difficult. Since crossing the threshold into the computer age, however, the institution faces numerous pressures and challenges in adapting emerging technologies to a deliberative legislative process.

Congress has made a remarkable transformation into the information age. Prior to the 104th Congress, fewer than 50 House Members had e-mail addresses, and there were no committee or personal office Web sites. The House of Representatives was a "paper-based" institution where electronic information and documents existed in separate computers that were not interconnected. Most documents were only available for mass distribution in hard-copy (paper) format.

Congress' efforts to bring itself on-line in the age of the information superhighway have become an important, albeit largely unheralded, part of the institutional reform efforts of recent years. The technological infrastructure of the House is state of the art. Members and staff are more savvy in their use of technology to enhance their productivity. Every Member and standing committee has a Web site. The public has unprecedented access to Members of Congress and real-time legislative information, such as roll call votes, the *Congressional Record*, bills and committee reports. Committees now have the ability to "cybercast" their hearings over the Internet, thus bypassing conventional media.

This new medium of communication is transforming the culture, operations, and responsibilities of Congress in a positive way. Providing real-time access to information allows the broader public to play a more

meaningful role in making government work better. Technology is helping us bridge the gaps of time and distance to bring representative government closer to the people. It is helping us to create a more orderly process and to reduce costs and bureaucracy.

In an effort to institutionalize a permanent examination of how technology is impacting the institution, the Rules Committee, through its Subcommittees, has conducted oversight on the impact of technology on the processes and procedures of the House.

During the 106th– 108th Congresses, for example, the Rules Committee examined the impact of technology on the role and responsibilities of committees, the dissemination of information electronically, and Congressional deliberation as the institution becomes more accessible to the public. The Committee also examined the use and impact of technology in the state legislatures. The Committee assessed how recent acquisitions of new forms of technology affected House and committee rules and decision-making in committees and on the House floor. The Committee reviewed how the Internet and other information technologies affect the way Members of Congress communicate with constituents. It also examined the advantages and disadvantages of providing immediate on-line access to various forms of congressional documents and information, particularly in light of the House rule requiring the electronic availability of committee publications. Finally, the Committee canvassed other committees' Internet broadcasting procedures.

In the 109th Congress, the Committee will continue building on these efforts to ensure that a proper balance is struck between the desire to enhance participation in our democracy, and the need to maintain the deliberative traditions and representative nature of the institution.

The Congressional Review Act of 1996

The Committee has general jurisdiction over statutory provisions changing the procedures of the House for consideration of resolutions or

bills disapproving or approving proposed action by the executive branch or by other governmental authorities.

The Congressional Review Act (CRA) is one such statutory provision that changes the procedures of the House. It was enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121) during the 104th Congress. The CRA provides Congress with an opportunity to review – and stop – regulations before their final implementation. Under the expedited procedures established by the CRA, if a majority of the House and Senate vote to approve a joint resolution of disapproval and the President signs it into law within 60 legislative days of the regulation's publication in the *Federal Register*, the proposed regulation cannot go into effect.

Since its enactment, the CRA has been used sparingly. Before the 107th Congress, only seven joint resolutions of disapproval had been introduced, and none of those measures were considered by either the House or Senate.

However, in the 107th Congress, the CRA's expedited procedures were utilized. On March 1, 2001, Senator Nickles introduced S.J. Res. 6, which was a joint resolution of disapproval for a regulation regarding ergonomics that the Clinton Administration sought to implement in its waning days. The Senate passed S.J. Res. 6 on March 6, 2001, by a vote of 56-44. On March 7, 2001, the House passed the measure by a vote of 223-206. On March 20, 2001, President George W. Bush signed it into law (P.L. 107-5).

In the 109th Congress, the Rules Committee may examine the CRA, and its procedures, in order to determine if the CRA can be enhanced and better utilized in the future.

Minority Views – Rules Committee -- 109th Congress Oversight Plan

Although, with certain exceptions, we are not generally opposed to the oversight plan as drafted by the Majority, we view the plan with caution. Throughout the 108th Congress and in previous Congresses, the Majority deliberately and systematically excluded the Minority when considering matters under the Committee's jurisdiction. And while we have no reason to be optimistic that the 109th Congress will be any different in this regard, we do expect that the Majority will make a significant effort to include the Minority in their efforts to "reform the process and procedures of the House" in the coming months.

Specifically, we expect to be consulted in a timely fashion regarding the Committee's work in the major areas of oversight outlined in this plan: the continuity of Congress, rules on jurisdiction, budget process reform, biennial budgeting, dynamic scoring, the impact of information technology in the House, and the Congressional Review Act of 1996.

Incapacitation

The majority's description of the new "provisional quorum" rule implemented as clause 5(c) of Rule XX in the 109th Rules package leaves the impression that this new rule was the result of a bipartisan process. It was not. Although the majority shared early drafts of this rule change with the minority and accepted some minor changes proposed by the Rules Committee Democrats, Republicans did not accept the key amendment that would have made this rule a truly bipartisan one.

The new rule attempts to address the following situation: what would happen if terrorists managed to successfully injure, but not kill, a significant number of Members of the House of Representatives? In this case, where Members would be temporarily unable to perform their duties but were still alive, the House would not be able to conduct business because it would lack a majority of its extant Members and therefore lack a quorum. The solution proposed in this new rule is to lower the quorum number by the number of Members who are incapacitated and temporarily unable to perform their legislative duties. In other words, in the wake of a calamitous event, the House would conduct its lawmaking and other business not with a quorum of 218 (as is now required if all apportioned 435 House seats are occupied), but with a much smaller number of Members.

Under the new clause 5(c), in the aftermath of a calamity, the House would first use the power it has under clause 5(a) of Rule XX to assemble a quorum through compelling the attendance of absent Members. When this process is exhausted, and a quorum has not yet appeared, the House would go through a special 72-hour quorum call. At the end of this call, the Speaker could, after consulting with the Majority and Minority Leaders, present to the House an unappealable "catastrophic quorum failure report" concluding that a calamity has taken place, a large number of Members are incapacitated, and that, as a consequence, the House is unable to assemble a majority of its whole number to do

business. After another 24-hour quorum call, the quorum number would be automatically adjusted downwards to a new provisional quorum number. This number would be determined by excluding the Members who have died and those Members whom the report deems incapacitated, unaccounted for, or otherwise incapable of attending. The House would then be able to conduct any business it can conduct with a quorum of the whole number of the House with this new, smaller provisional quorum.

As both Mr. Frost and Mr. McGovern explained in statements they contributed to a Special Order Chairman Dreier held on this subject on September 22, 2004, this new rule leaves too much power in the hands of the Speaker to make arbitrary decisions about Members' capacity to fulfill their constitutional duties. Under this rule, the Speaker has the sole power 1) to determine that a catastrophic event contemplated by the rule has occurred and 2) to determine which Members are incapacitated and therefore unable to perform their duties. While the Speaker is the constitutionally-created presiding officer of the House, he or she is also the leader of the majority party in the House, which means the Speaker's unilateral decisions to designate a disaster situation and/or to declare certain Members incapacitated will be vulnerable to charges of partisanship and manipulation. Such charges, whether they are made against a Republican or a Democratic Speaker, would harm the legitimacy and the credibility of any subsequent actions the House took with a diminished quorum.

The new rule is not a bipartisan one because Rules Committee Republicans rejected Rules Democrats' amendment that would have required the Speaker not just to consult with the Majority and Minority Leaders, but to obtain their *concurrence* that a calamity has occurred, that certain Members are dead or incapacitated, and that it is necessary to trigger the process for establishing the lower provisional quorum. We argued that this language would transform a unilateral decision-making process into a consensus-building, non-partisan institutional process. For the actions of a Congress in the aftermath of an attack to have legitimacy, we argued, House leaders must be able to show Members from both parties and the American public that the decision to operate under a reduced quorum was based solely on our solemn duty to preserve the institution of the House. We believe this rule's failure to establish a process in which a diminished House can only organize and do business with the *concurrence* of party leaders will leave it vulnerable to charges of partisanship and illegitimacy.

We find it curious that Republicans refused to accept our language to include leaders from both parties in the decision to trigger the reduced quorum procedure, because their own expert, Professor Walter Dellinger, proposed it in the testimony he submitted to the Committee during the hearing on April 29, 2004. Professor Dellinger's testimony expresses the same concern we have outlined in the previous paragraphs. He said: "For the rule's invocation to have true legitimacy, there must also be some procedural guarantee that the rule is not being improperly invoked for factional reasons." Out of his concerns over legitimacy, Professor Dellinger went on to "strongly recommend that the power to invoke the rule be placed not solely in the discretion of the Speaker, but rather require as well the concurrence of one of more members of the minority party's leadership, from a list chosen ahead of time."

In other words, Rules Committee Republicans explicitly rejected the single most important policy recommendation their star witness, Professor Dellinger, made in his testimony.

The piece of Professor Dellinger's testimony they instead chose to highlight was his opinion that the House rulemaking power is sufficiently robust, and that the Constitution's quorum language is sufficiently vague, to allow the House to adjust down the quorum number to account for Members incapacitated due to a national calamity. In his April 29 testimony, Professor Dellinger argued that a diminished House is better than no House at all in an emergency situation and that a literal reading of the Article I, Sec. 5, quorum requirement ("a Majority of each [House] shall constitute a quorum to do Business") could do irreparable damage to our system of government, which the Founders could not have intended.

While Professor Dellinger is a well-regarded jurist, we must note that other experts are less confident that lowering the quorum is constitutionally sound. These scholars argue that a plain reading of the Constitution's quorum requirement leads to the obvious conclusion that the House can only do business when a Majority of its whole, apportioned number is present. Professor Cass Sunstein of the University of Chicago Law School, for example, in testimony he submitted to Senator Cornyn and the Senate Judiciary Committee, took the position that the House rulemaking power may extend to lowering the quorum, but conceded,

"To say the least, it is awkward and uncomfortable to interpret a document in a way that violates its evidently plain meaning. In addition, the quorum provision has an important structural purpose, which is to ensure that laws are not made by a minority of the legislature, in a way that compromises the constitutional commitment to deliberative democracy. (The ability to raise quorum objections to a voice vote is an important safeguard here)."

Not surprisingly, Rules Committee Republicans did not ask Professor Sunstein or another legal scholar who shares his more conservative view of the House rulemaking power to testify during the one hearing they held on this crucial question. As a result of Republicans' refusal to thoughtfully consider this very serious problem, the House has now adopted a rule that may or may not withstand constitutional scrutiny in the aftermath of a national calamity.

Jurisdiction

The Democrats on the Rules Committee share your contention that the Rules Committee plays an integral role in the modernization and improvement of the Rules of the House. We also fully recognize that it does indeed make sense to conduct periodic, thorough overviews of our committee composition and the jurisdiction structure. However, we take exception to the characterization that the committee makeup was "bloated and ineffective" prior to the 104th Congress. Such a depiction is at best an exaggeration and

at worst a deliberate slight directed towards those who controlled the Congress at that time.

The former standing committees that were folded into the current committee structure were and are still vital functions of this nation and its economy. To suggest otherwise is either naive or again intended as a gratuitous slight. The last time we looked, our Federal employment system, our postal system, our maritime economy and the District of Columbia were all important and actively functioning entities in our nation. If we are to work together to fine-tune and otherwise improve the Rules of the House and update the procedures as is appropriate in the 21st century, let's do so without self-serving, unproductive and negative remarks regarding past Congresses.

The most important thing to remember in undertaking this process is that it must be fair, it must be open and all sides must be able to participate fully in any changes to the current Rules. This participation must include ample debate and ample opportunity to offer responsible and substantial changes to the process. To exclude ideas and recommendations based on partisan differences is a disservice to the institution and to the citizens who sent us here to work together in the best interest of this nation.

You may recall that a significant overhaul of the House Rules was conducted in the 105th Congress. A recodification task force consisting of Rules committee members on both sides of the aisle was established to undertake a comprehensive overview of the House Rules. This successful effort was undertaken in a truly bipartisan and responsible manner. The result of that bipartisanship was the creation of an excellent document that streamlined and improved our current House Rules without changing the underlying principles that have made them work so well in the 200 plus years that they have been in use. That process was one in which we could all be proud and should serve as a model for any future undertaking to review and/or amend the House Rules.

Budget Process

Regarding budget process reform, it is clear from the resounding defeat of H.R. 4663 during the 108th Congress, that no serious budget reform can take place without the involvement of the Budget Committee and the Appropriations Committee at the beginning of the process. The proposal to establish a joint committee on budget process reform is not one that the minority necessarily dismisses out of hand. However, any such committee should be composed of an equal number of Democrats and Republicans, and an equal number of House and Senate members, and should reflect the strong interest that both the Budget Committee and the Appropriations Committee have in this matter.

The Democratic Members of the Rules Committee continue to oppose biennial budgeting for the same reasons that have been enumerated for various Congresses. The reason that the budget and appropriations process takes as long as it does is due to politics, not process. If the Republicans, who control the House, the Senate and the White House, would make budgetary decisions in a timely fashion, then Congress would complete its

budget responsibilities according to the schedule laid out in the Budget Act, and would not have to rely on year end omnibus bills to complete the appropriations process.

One of the main reasons for switching to biennial budgeting that is often cited by proponents is that it would give the authorizing committees more time to do oversight. However, very few House committees have shown any interest in conducting much oversight since George W. Bush was elected President. As an example, the Government Reform committee conducted hundreds of hours worth of investigation into the White House Christmas Card list when President Clinton was in office, but only five hours of investigation into the Abu Ghraib prisoner scandal that has dogged the Bush Administration. It would seem to us that the authorizing committees have plenty of time to do oversight currently, they just choose not to fulfill that responsibility during Republican administrations.

Finally, biennial budgeting is an outright renunciation of fiscal powers given to Congress by the Constitution. By giving the Administration two years worth of funding, Congress hands the power of the purse over to the Executive, and gives up holding the agencies responsible for those funds, and the laws that they are supposed to implement. Also, there is nothing in current law which prevents the President from requesting two years of funding at one time and Congress could appropriate biennially if they chose to. The fact is that many members on both sides of the aisle continue to doubt that this is an effective way for Congress to handle the federal budget.

Dynamic Scoring

For many years, Rules Committee Republicans have faithfully carried the water for a discredited economic theory holding that tax cuts pay for themselves by generating new economic activity. Their argument, associated with the so-called "supply side economics" school, is that if economists measured the true "dynamic" effects of tax cuts on Americans' economic behavior, they would find that tax cuts actually lead to greater economic activity and higher tax revenues. They harshly criticized the Congressional Budget Office and other analysts who employed more conservative "static" economic models leading to the conventional conclusion that tax cuts lower federal revenues and increase budget deficits.

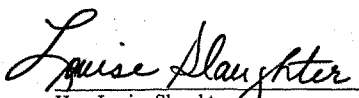
In the late 1990s, House Republicans adopted a rule (now codified at clause 3(h) of Rule XIII) requiring every tax bill to include a "macroeconomic impact analysis," even though the Congressional Budget Office, Federal Reserve Chairman Alan Greenspan, and most other respected economists argued there is no feasible way to scientifically measure the macroeconomic effects of tax legislation.

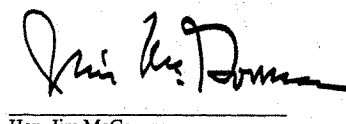
In March 2003, the dynamic scoring supporters finally got their wish. In its analysis of the President's 2004 budget, the Congressional Budget Office (CBO) conducted an exhaustive "macroeconomic analysis" of the President's proposed tax cuts. After analyzing the tax cuts under a number of different macroeconomic models, CBO concluded that dynamic scoring did not significantly change the revenue estimates the

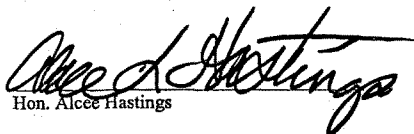
CBO had reached with its conventional scoring methods. In fact, under several "dynamic scoring" models, the revenue loss would be higher than under the static model. As Alan Murray of the Wall Street Journal wrote, this CBO analysis conclusively proved "there is no free lunch." Dynamic scoring will not help Republicans escape responsibility for the historic budget deficits their policies have created.

Conclusion

The Democrats on the Rules Committee remain willing to work with the Committee majority when the majority wants to proceed with a fair and open process that involves all the Members of the House. As the Rules Committee considers its significant responsibilities in the 109th Congress and beyond, we expect and hope that the Majority will conduct the Committee's legislative and oversight responsibilities in consultation with the Minority.


Hon. Louise Slaughter


Hon. Jim McGovern


Hon. Alcee Hastings

HON. ALCEE L. HASTINGS