The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. SOUDER) is recognized for 5 minutes.

(Mr. SOUDER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HINCHEY) is recognized for 5 minutes.

(Mr. HINCHEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FRANKS) is recognized for 5 minutes.

(Mr. FRANKS of Arizona addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Mrs. MALONEY) is recognized for 5 minutes.

(Mrs. MALONEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

DEFENDING FREEDOM AND DEMOCRACY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from California (Mr. DREIER) is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Mr. DREIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of the Special Order that I am about to give.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DREIER. Mr. Speaker, having listened to the words of my good friend, the gentlewoman from Ohio (Ms. KAPTUR), I would like to say that the Special Order that I am going to be presenting this evening refers to exactly what she was talking about in the final remarks that she provided, very thoughtful remarks.

It has to do with the fact that this institution, this building, this entity is in fact the citadel of freedom. And I think and I believe it is very important for us to realize the great importance of that.

Mr. Speaker, it has been 3 years since the heinous attacks and the absolute horror that befell America on September 11 of 2001. And it was not just an attack on America. It was an attack on the free world. Citizens from many nations were murdered and maimed that day, as we all know. But perhaps more important, this was an attack on the core values of freedom and democracy that are embodied in our Nation and in all of the free people of the world.

□ 2030

While nations have cooperated in an unprecedented fashion in the fight against terrorism, unfortunately, much remains to be done.

We have just gotten the tragic news in the last 24 hours of the tragic beheadings of Messrs. Armstrong and Hensley. We saw the bombings in Spain and the recent tragedy in Russia; both underscore the need for all of us to remain vigilant in this global war on terror.

Mr. Speaker, our Nation has a special responsibility, a very special responsibility, to protect the core freedoms and liberties of democracy, for we continue, as I was saying at the outset, to be the beacon for democracy, and our Capitol, as the gentlewoman from Ohio (Ms. KAPTUR) was just saying earlier, our Capitol perhaps is the single most recognized symbol of democracy all over the world.

In fact, I remember very vividly back in 1990, I had the opportunity to bring one of the Solidarity activists from Poland for President Bush's State of the Union address. I remember very well we were walking along, and the Capitol, of course, was particularly well-lit because we all know on the night of the State of the Union the television networks put added light on the Capitol. All of the sudden, tears were coming down the face of these people who had come from Poland, and I asked what it was. They were simply looking at the Capitol dome, and that, for me, underscored how clearly this is the most recognized symbol of democracy and freedom in the world.

I believe that our responsibilities as Representatives of this democracy are twofold. First, we must employ our full legislative power to make our Nation safer, our citizens more secure and to defend our democracy against all terrorists.

Second, we must do everything in our power to ensure that our institution, the Congress itself, can continue to operate in the face of any crisis, any terrorist attack, any disaster. Again, we need to be able to see that this institution can function in any crisis, any terrorist attack, any disaster that could possibly hit us.

Mr. Speaker, since the District of Columbia became the permanent seat of our government, the United States Congress has been unable to use the Capitol for an extended period only once. That occurrence, of course, was during the War of 1812 when the Capitol was burned, as we all know. Nonetheless, the enduring threat of the last century, the Cold War, forced the Federal Government to plan for its continuity in the event of a catastrophe.

Some people assumed, however, that after the Cold War this kind of planning could stop. We all know that 3 years ago this past September 11, not only did that tragic event put that notion to rest, but it changed our thinking and our planning for the continuation of representative government, representative democracy as we know it.

Indeed, we saw smoke rising from the Pentagon and later heard of the bravery of the passengers on Flight 93 as they cried, ''Let's roll.'' Many of us shared a feeling of having just missed a bullet, a bullet that could have hit this Capitol itself.

We share the additional responsibility for our very institutions, for our individual Members, for our staff and for the thousands of people who visit the Capitol every single day.

Following September 11 and the subsequent anthrax and ricin attacks, our continuity learning curve has been very, very steep. However, the good news is that we have worked hard and have implemented a number of measures that improve the continuity of our Congress.

Indeed, we have taken the advice of one of our great Framers of the Constitution, Alexander Hamilton, who in Federalist 59 said, ''Every government ought to contain in itself the means of its own preservation.'' Let me say that again. ''Every government ought to contain in itself the means of its own preservation.'' Those are Alexander Hamilton's words.

Toward that end, in the last 3 years, the Speaker has focused the United States House of Representatives on three core areas for our overall continuity: number one, upgrading the physical security of both our D.C. and our constituency offices; number two, preserving our continuity of operations here in Washington, D.C.; and number three, addressing the continuity of our form of government itself through debating how to deal with catastrophes that result in large numbers of Members being killed or incapacitated.

Mr. Speaker, let me now turn for a moment to discuss our efforts to preserve the continuity of our congressional operations.

The Speaker of the House has long recognized that if the Capitol, or if Washington itself, were to become unsuitable as a meeting place for the House, whether due to attack, contagion or other calamity, an alternative site for operations would be needed. Much thought has gone into the placement of sufficient resources, technology, staffing and accommodations for Members and key staff so that we could continue to fulfill our duties to the American people. Additionally, we have already adopted a number of very important rule changes to give the House the operational flexibility we believe it would need in a crisis.

Mr. Speaker, those include: first, authority for the Speaker to declare an emergency recess subject to the call of the Chair when notified of an imminent

threat to the safety of the House; second, authority to address the constitutional requirement that the House and Senate assemble in the same place outside the seat of government; third, authority for a designee of the Speaker to act with the Senate to effect a recall of the membership; and fourth, authority for the Speaker to convene the House anywhere within the seat of government.

Now, at this point, I have a particular item I would like to enter in the RECORD.

PARLIAMENTARY STEPS TAKEN TO ENSURE CONTINUITY OF OPERATIONS

Authority to effect a joint-leadership recall from a period of adjournment to an alternate place (in concurrent resolutions of adjournment).

Authority to effect a joint-leadership recall from a period of adjournment through designees (in concurrent resolutions of adjournment).

Anticipatory consent with the Senate to assemble in an alternate place (in a putatively biennial concurrent resolution on opening day of a Congress).

Requirement that the Speaker submit to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker (including physical inability of the Speaker to discharge his duties) until the election of a Speaker or a Speaker pro tempore, exercising such authorities of the Speaker as may be necessary and appropriate to that end (clause 8 of rule I).

Authority for the Speaker to suspend pending business of the House by declaring an emergency recess subject to the call of the Chair when notified of an imminent threat to the safety of the House (clause 12(b) of rule I).

Authority for the Speaker, during any recess or adjournment of not more than three days, in consultation with the Minority Leader, to postpone the time for reconvening or to reconvene before the time previously appointed solely to declare the House in recess, in each case within the constitutional three-day limit (clause 12(c) of rule I).

Authority for the Speaker to convene the House in an alternate place within the seat of government (clause 12(d) of rule I).

Codification of the long-standing practice that the death, resignation, expulsion, disqualification, or removal of a Member results in an adjustment of the whole number of the House, which the Speaker shall announce to the House and which shall not be subject to appeal (clause 5 of rule XX).

Establishment of a Select Committee on Homeland Security with oversight and legislative over matters relating to the Homeland Security Act of 2002 identified by the Speaker and the responsibility to make recommendations concerning future legislative jurisdiction over homeland security matters (sec. 4, H. Res. 5, 108th Cong.).

Establishment of an Appropriations Subcommittee on Homeland Security.

Mr. Speaker, as I have mentioned, we have approached continuity planning during the 108th Congress in three distinct areas. I now want to talk about what is perhaps the most difficult aspect of our planning: how we will continue to legislate if large numbers of our Members are killed or incapacitated.

Obviously, this is a horrible thought. We do not like to even contemplate or consider it, but we all know that we live in a very, very dangerous world, and it is a responsibility that we have to take very seriously. This issue necessarily requires us to contemplate that which none of us really wants to consider, that being our mortality. Mr. Speaker, this is at the heart of why I stand before the House this evening. I am deeply concerned that we need to act now to protect the House as an institution if the unthinkable were to happen.

One of the most difficult questions that we have had to consider is what we would do if large numbers of Members are so injured that they cannot fulfill their duties. This incapacitation of large numbers of Members, what we call the ''mass incapacitation'' of Members, poses a grave threat to the ability of the House to function in a time of crisis.

We have spent a lot of time on a nonpartisan basis discussing this issue, and I underscore that this as an institutional issue. It is not a partisan issue. In each of these discussions, Mr. Speaker, good questions have been asked by a number of Members and staff on both sides of the aisle who are committed to the survival of this institution, the greatest deliberative body known to man.

Mr. Speaker, what I would like to do now is address with answers some of the very important questions that have been posed. First of all, as we look at providing a definition of the problem, what is the so-called ''quorum trap''?

As we all know, a quorum is an essential part of a legislative body. In some nations, including our allies in the United Kingdom, it is but 40 members, a very small number. However, in the United States, a quorum is set by the Constitution as a majority of Members. That is what is stated in the U.S. Constitution. Long-standing House precedent defines a majority as those Members who are chosen, sworn and living. ''Chosen, sworn and living'' is what determines, that is, it's the precedent for establishing a majority. The standard does not address Members who are chosen, sworn, living, but unable to carry out their duties because they are incapacitated. Thus, if Members are alive but unable to carry out their duties, they remain in the calculation of quorum.

If large numbers of Members are incapacitated and a roll call vote is needed, the House could be unable to obtain a quorum. This is what we call the ''quorum trap,'' where so many Members would, in fact, be unable to respond to a quorum call. Let me say that again. If large numbers of Members are incapacitated, we, as an institution, could be unable to act.

The potential rule change that I will explain in a moment would go into effect if, after an attack, more than half the number of those Members remaining alive were incapacitated, again, half the number remaining alive are incapacitated. That is why we refer to this as ''mass incapacitation.''

Additionally, it is important to note that the quorum trap only becomes a problem for the House if a roll call vote is needed. Again, the quorum trap only becomes a problem if we have to have a roll call vote. House precedents provide that a quorum is presumed unless challenged. If the Members can agree to the business of the House being considered by unanimous consent, then the lack of a quorum would not be an issue. Nonetheless, as an institution, we cannot take the risk that we will always be able to act by unanimous consent.

The House is very limited in what it can do without a quorum. It can only do two things without a quorum, Mr. Speaker. Number one, adjourn from day-to-day; or number two, send the Sergeant-at-Arms to try and bring enough Members in to constitute a quorum. Those are the only things that we are able to do without a quorum.

Without the potential rule change to deal with the quorum trap, we could be unable to act at exactly the time that the American people expect us to do so.

Unfortunately, even after years of consideration, no one has been able to adequately define exactly what incapacitation is for every possible situation. Up in the Committee on Rules, we had a hearing. We had testimony from our attending physician, Admiral Eisold. He testified to the Congress, and he revealed that making a determination of incapacitation involves so many factors that it would be difficult, if not impossible, to have a bright-line test for exactly what is incapacitation.

Rather than trying to define incapacitation, this approach defines what constitutes the House. It is the number of Members who are not incapacitated. That is, the Members who can show up to answer the call of the House, the quorum call. That ''call of the House'' could be a regular roll call vote, like we have every day, or it could be done through the rule that gives the Speaker the power to recognize any Member to move a call of the House for establishing a quorum.

What types of catastrophic events would trigger these kinds of provisions? Mr. Speaker, the language of the rule is intended to cover broad possibilities, including catastrophic circumstances involving natural disaster, attack, contagion or similar calamity that render representatives incapable of attending the proceedings of the House. For example, Members could be incapacitated because they are so injured that they cannot fulfill their duties, or they may be missing and presumed dead, or they could be held hostage.

What is the solution? How would the potential rule change procedure play out? At its core, mass incapacitation presents one key problem for the House. If too many Members are incapacitated, the House is actually unable to do business for the American people during a time of crisis.

The Constitution says that a majority quorum is required for House business.

□ 2045

Another way of thinking about this majority requirement is that it is a fraction. The amount above the line is the number of Members who are physically present and can participate. The amount below the line is the number of Members who exist. Rather than trying to define incapacitation, this potential rule change uses the ability or inability of Members to show up and participate as a measure of who exists, the amount below the line.

This potential rule change, if adopted, would solve the quorum trap by requiring the following procedural steps: The rule requires that Members dispose of a motion for the Sergeant at Arms to find Members so that we can hopefully obtain a quorum without going any further than that.

Additionally, if this attempt to gather a quorum fails, the next stage of the rule requires an extremely lengthy call of the House. We would call for 72 hours, a quorum call of 72 hours, exclusive of time that the House has spent in recess, to try to gather 218 Members in order to establish a quorum.

Next, if that step fails to produce a quorum, the rule requires that the Sergeant at Arms, in conjunction with the Attending Physician to Congress and other relevant law enforcement and public safety officials, report to the Speaker, the minority leader and the majority leader on the state of the membership and whether the failure of quorum is due to catastrophic circumstances. This report would be updated daily and made available to the entire House. Members could, if they choose, disseminate the information. It would consist of the following:

(A) the number of vacancies in the House and the names of former Representatives whose seats are vacant; (B) the names of Representatives considered incapacitated; (C) the names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House; and (D) the names of Representatives unaccounted for.

Now, the next step in the rule is for the Speaker to decide whether to formally place the report of the Sergeant at Arms before the House. The Speaker could decide to delay this formal step in order to collect more information about the membership and the nature of the catastrophe. However, if the Speaker does place the report before the House formally, the next step would be to have another very lengthy quorum call, 24 hours, again exclusive of time that the House would be in recess.

Finally, if enough Members for a quorum of 218 have not shown up at this point, then the rule would allow for the establishment of a ''provisional,'' that is, a temporary quorum of the House at this point. This ''provisional quorum'' would consist of a majority of those Members who could show up and fulfill their duties. Under this temporary quorum, the House could act for the American people in a time of crisis.

Now, what are the origins of this plan? Continuity discussions began in earnest during the 107th Congress. The bipartisan House leadership agreed on the formation of a task force led by my colleague, the gentleman from California (Mr. COX), and the ranking minority member of the Committee on Rules, the gentleman from Texas (Mr. FROST). This task force included a number of Members concerned about the continued operations of our institution. Many of the recommendations of the Cox-Frost group were adopted at the start of the 108th Congress. This rule change concept originated in the Cox-Frost discussions. However, an impasse was reached over how to try to define incapacitation, and the group decided to allow for more analysis of this very, very difficult question.

Mr. Speaker, the Continuity of Government Commission, sponsored by the American Enterprise Institute and the Brookings Institution, tried to consider the issue of incapacitation but, similarly, could not come to agreement over how to define incapacitation or what to do about it. As we have said, this is a very, very difficult issue.

The Committee on Rules held a hearing on H. Con. Res. 190 to create a joint House-Senate committee to address continuity issues, including incapacitation, and the House overwhelmingly passed it in June of last year. The Senate has not acted upon this proposal yet.

In the spring of this year, just a few months ago, as we all know, the House addressed what to do if large numbers of Members are killed, and this institution adopted by a bipartisan margin of 306 to 97 the Continuity of Representation Act, which I coauthored with the chairman of the Committee on the Judiciary, my friend, the gentleman from Wisconsin (Mr. SENSENBRENNER).

Additionally, the House rejected a proposed constitutional amendment to allow for the appointment of temporary ''stand-in'' Members who were incapacitated or killed. That was defeated on a vote of 63 to 353. So this institution has stated very firmly that we want to maintain the elective nature of this institution, as James Madison, the father of the Constitution, envisaged it.

We know very well, Mr. Speaker, that ours is the only Federal office where one must be elected to be able to serve at the Federal level. Senators can be appointed, and we all know that, by appointment, one can become the President of the United States without standing before the voters. But this institution is where everyone who has ever served has been elected. And I am happy that, by a margin of 63 to 353, the House rejected that proposed constitutional amendment.

The Committee on Rules held an original jurisdiction hearing on the mass incapacitation of Members in April of 2004. Testifying at the hearing were a number of experts on the House rules, the Constitution and the issue of incapacitation. The report of this hearing is available on the Committee on Rules Web site and has been printed by the Government Printing Office.

At the April 2004 hearing, we distributed a discussion draft of the proposed rule change. Discussions have continued on a bipartisan basis since then, and a number of improvements to the proposal have been made.

Now, why would we need a provisional quorum? Why does the House need to establish procedures to deal with the possibility of mass incapacitations?

We need to assure the American people we are doing everything we can to provide for continuity of government in the face of any catastrophic event. Rules must be in place prior to a crisis. We need to be considering this matter with a ''triage'' mindset, similar to that taken by health care workers and doctors during an emergency.

Mr. Speaker, if a jet plane, God forbid, hits this Capitol dome, hits this building when we are all here voting or a biological agent is released, we need to plan for how to deal with the worst problems first. We need to realize that we will not be operating in a best-case scenario and that having some plan in place is better than no plan at all.

Now, why does this proposal that we have only address mass incapacitations?

Mr. Speaker, this procedure would go into effect if large numbers of Members are incapacitated, large numbers. If individual Members are incapacitated, they are very unlikely to affect our ability to achieve a majority quorum. However, after a catastrophe, a key question will be whether it resulted in large numbers of deaths, large numbers of incapacitations or both.

If we are dealing with a full, living membership and only incapacitated Members but no deaths, we would need 218 or more Members incapacitated in order to trigger a problem with quorum. With deaths, the quorum is automatically reduced by the rules, and the number of incapacitations that could trigger a quorum trap also would drop.

To illustrate: If you had 300 fatalities, the rules now would require a quorum consisting of a majority of the remaining 135 Members. There are a total of 435 Members in the House, as we all know, Mr. Speaker. If we had 300 fatalities, the rules would require a quorum consisting of a majority of the remaining 135 Members, which would mean a quorum would be 68 Members. However, if 68 or more of the remaining Members were incapacitated, we would be in the quorum trap. The House would be unable to function.

Now, what about those living Members who are not incapacitated but otherwise unable to show up and to participate?

If, for example, a Member is stuck overseas at the time of the quorum calls and makes his or her presence and willingness to return known, then that Member's seat cannot be declared vacant through expulsion. In addition, the potential rule change would not change or in any way modify the longstanding provisions allowing a smaller number of the House to arrest and force the return of a wayward Member.

Now, the constitutionality of this proposed solution is a very, very important question. Is it constitutional? Is it constitutional? Who would have standing to sue over this provision?

Mr. Speaker, to me it is very clear. Article I, section 5, clause 2 of our constitution gives the House and the Senate authority to determine their own rules of proceeding. Professor Walter Dellinger, the great constitutional expert, testified before our committee at the April 2004 meeting, the hearing we had on incapacitation and quorums. In that hearing, in his testimony, he said the following, and I happen to agree with him. This is Professor Dellinger. ''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.''

He went on to say, ''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.''

Professor Dellinger continued saying, ''I think there is a great advantage to adopting a rule now if we can get really widespread and bipartisan agreement on it, because you are acting now behind what one of the philosophers calls the ''veil of ignorance.'' You don't know whose party is going to be benefitted, if we were to see mass incapacitation; whose faction is going to be burdened by this. No one knows what impact it would have on the makeup of this institution.

Now, one of the things we, of course, want to do is maintain the rights of the minority. So the question that is naturally raised is, how are the rights of the minority protected under this potential rule change?

It is important to note that the Speaker can, at any time, recognize any Member for a motion to adjourn, which, if adopted, would stop this process and force it to be completely started over, if he chooses to start it over at all.

Additionally, while the report of the Sergeant at Arms must be made available to the membership on a daily basis, the Speaker has the power to not formally announce the report of the Sergeant at Arms to the House. He has the right to not announce and, thus, can delay or stop the process from moving forward.

Now, if at any time a Member is no longer incapacitated and can show up, then he or she is automatically added back into the calculation of quorum. Once we again have 218 Members present, then the provisional quorum under this rule change ends.

Finally, the Senate would always act as a check and balance to any action of the House under a provisional quorum, as would the President, the Judiciary, the press and the public.

Now, Mr. Speaker, some have noticed that we made the Speaker's actions in deciding to announce the report of the Sergeant at Arms unappealable. Now, why is that, that we placed this responsibility solely with the Speaker?

The role of the Speaker is that of a ministerial act in dealing with this. That act of the Speaker announcing the report could only come after an extremely long quorum call, as I said, 72 hours, excluding time spent in recess. If that extremely long quorum call has not produced a quorum, then by definition you cannot appeal a ruling of the Chair if you do not have a quorum present.

To make this action appealable, you would place the procedure back into the quorum trap, and therefore, it could not be used, because if the Speaker does make a decision, the ruling could not be challenged because a quorum would not be present.

Additionally, another reason for the unappealability of the Speaker announcing the catastrophic quorum failure report is that the Speaker is not required to make the announcement. By not announcing the report, he can stop the functioning of the proposed rule so that more information can be gathered and considered.

Now, what about requiring the concurrence of the minority leader in determining who should be counted for a quorum?

The Speaker is the only constitutionally proscribed authority for the House. This type of decision should not require equal sign-off from someone in the opposite party. It politicizes a procedure that, as I said, should be a ministerial procedure. The current House rules have a rare exception on minority concurrence on timing of committee hearings but not on any question of this magnitude. And even with this exception, the chairman of a committee can, by a majority vote, decide to hold a meeting at any time, even without the concurrence of the minority.

We should not make the rules ''partisan'' in an attempt to appear ''bipartisan.''

□ 2100

We should strive in a rule such as this, of such great magnitude, to be nonpartisan. This is because we do not know, nor can anyone predict, which party would be most affected by a catastrophe. It is entirely possible, Mr. Speaker, that the Speakership and control of the House could change hands following a catastrophe. There would still be the need for a quorum to elect a new Speaker no matter what party had the most Members responding.

Mr. Speaker, in a time of crisis, the House will need one leader who can act, not a committee, and should not be concerned with partisanship. Partisanship should not be an issue in a time of a catastrophe like we are contemplating here. This holds true for whichever party is in control and whoever is elected Speaker.

Mr. Speaker, we hope and pray that the circumstances never arise where such an order of the House is necessary. But at the same time if we do not address the problem of mass incapacitation, we will fail at one of our most important duties, assuring continuing representation and congressional operations for the American people during times of crises.

Finally, I would like to advise Members that we hope very much to bring these matters before the full House very soon. It is vitally important that the House have in place a procedure to deal with mass incapacitation before we complete our business for the year and recess, before the national elections, and before the counting of electoral ballots.

Mr. Speaker, as I have already done, I have asked unanimous consent, and I know the gentleman from Texas (Mr. FROST) was hoping to be able to participate here this evening, the ranking minority member of the Committee on Rules, and he had some comments that I know he plans to add into the RECORD; and I am sure there will be other Members who wish to add their comments to this very important issue, which, as I said, we do not like to contemplate, but we must take on our responsibility to do just that.

Mr. FROST. Mr. Speaker, I would like to thank the Chairman of the Rules Committee Mr. DREIER for convening this special order tonight to discuss the very important issue of how the House would survive an enemy attack that left a majority of our Members dead or unable to perform their duties. I would also like to associate myself with the comments of my Rules Committee colleague, Mr. MCGOVERN, who is the ranking member of the Rules Subcommittee on Technology and the House and has taken a keen interest in this issue.

Mr. Speaker, it has been more than 3 years since the September 11 attacks and the startling realization that the Capitol Building and Members of Congress were in imminent physical danger that morning. If not for the bravery of the passengers on Flight 93, the United States Capitol, the seat of our legislative branch, could have been destroyed by an enemy attack, killing or injuring an unknown number of Senators, Representatives, and staff. It is now clear we were wholly unprepared to deal with the aftermath of a successful attack. We had given little thought to how Congress would continue performing our duties if our chambers and offices were destroyed, and many of our Members were dead, injured, or missing.

There is no way the wise people who created our Federal Government could have ever foreseen the possibility that enemies of the

United States could highjack large commercial jets and try to fly them into the seat of the Federal Government. In the summer of 1787, the Founding Fathers spent a great deal of time identifying, discussing and correcting the weaknesses in the constitutional system they were creating, but we cannot fault them for remaining silent on threats to the system they were unable to imagine.

It instead falls on our shoulders to take the necessary steps to ensure that Congress will continue to function in the face of threats that are new to our age. All Members of the 108th Congress, especially those in leadership positions, share the same responsibility that Members of the 1st through 107th Congresses bore during their times of service: to preserve the institution of Congress and the role of the legislative branch in our constitutional democracy. As I have stated many times in the various hearings and debates we have conducted over the past several years, ''continuity of Congress'' is above all an institutional issue. There is no issue on which partisan posturing or maneuvering is less appropriate. Our enemies seek to destroy and disrupt our democratic system; they view all of us, both Democrats and Republicans, as their common enemies.

Mr. Speaker, on the evening of September 11, we gathered on the East steps of the Capitol as Americans and as Members of Congress who had sworn to protect and defend our country and our Constitution. At that moment, our partisan divisions were meaningless. We stood hand in hand and sang ''God Bless America'' to show the American people that their Congress was open for business and prepared to respond to the terrorist attacks. As the former Republican majority leader, my North Texas colleague, Dick Armey commented at that time: ''I cherish the fact that when our country needed us to come together, we stood on the steps of this Capitol and hand to hand we sang ''God Bless America'.''

Over the 3 years that have now passed since that evening, there have been moments where Members of Congress and outside experts have risen to the challenge of honestly confronting the tough questions surrounding how our three branches of government would endure a direct enemy attack. In May 2002, the Speaker and minority leader created a bipartisan ''Continuity of Congress Working Group,'' which I co-chaired and came to be known as the ''Cox-Frost Working Group.'' This group met eight times in the following months, consulted with outside experts, and carefully examined the current rules and statutes governing congressional and executive succession. Late in the 107th Congress, the group unanimously recommended three House Rules changes it felt would improve the Speaker's ability to reconvene the House after an attack. The House adopted these suggestions into its rules package for the 108th Congress.

Elsewhere in Washington, Congressional scholars from two usually ideologically opposed think tanks, the Brookings Institution and the American Enterprise Institute, came together to create the Continuity of Government Commission to examine these problems. Commission members included former House Speakers Newt Gingrich and Tom Foley, respected former Members of Congress from both parties, as well as former senior officials from both Democratic and Republican administrations. After two all-day hearings and extensive consultations with former Members of Congress and scholars, the Commission released a report in May 2003 concluding that ''there is a gaping hole in our constitutional fabric that would allow large numbers of vacancies in Congress to continue for a significant period of time.'' The Commission frankly admitted that it looked at all options short of amending the Constitution, but reluctantly concluded that amending the Constitution to clarify what would happen in the case of mass vacancies or incapacitation in Congress was ''the only solution that adequately addresses the problem.'' The Commission wrote: ''Our study of alternative approaches persuades us that no other option provides more than a partial and inadequate fix to the problem.''

It has been a great disappointment to watch the spirit of honest inquiry and comity that characterized the work of the Cox-Frost group and the Continuity Commission vanish in the 108th Congress. I have been dismayed to see the House debates over continuity issues in this Congress revert back to the normal partisan lines. On several occasions this year, Republican leaders have jammed through bills and resolutions on continuity issues with little or no opportunity to offer amendments and inadequate hearings. While Rules Committee Republicans deserve credit for holding a civil and informative hearing on this proposed rules change last April, the only outside witness they called to testify was a legal scholar who would confirm their pre-determined position that the House rulemaking power allows the Speaker to adjust down the quorum number. With all due respect to the Republicans on my committee, I do not believe this single hearing confronted the constitutional and institutional complexities raised by this rules change in the serious, thoughtful way they deserved.

Although the resolution draft the committee is currently circulating is a great improvement over earlier drafts, I nevertheless oppose it. I do so because I do not feel it takes all of the steps necessary to make sure that in the wake of a catastrophic enemy attack, the surviving, able-bodied Members of the House of Representatives would be able to regroup, reorganize, and demonstrate to the American people that they have risen above their partisan divisions to preserve the House of Representatives and the indispensable role it plays in our constitutional system. It is essential that the rules we establish now to govern a future catastrophic situation give the remaining Members every possible tool to prove to the American people that all of their actions, both the reorganization and the legislation they pass afterwards, are motivated only by their duty to protect our country and our democratic form of government. I believe this resolution'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.

The rules change proposed in this resolution addresses the issue of mass Member incapacitation. What would happen if terrorists managed to successfully injure, but not kill, a significant number of Members of Congress? Since the early 20th century, House precedents have defined the membership of the House for the purpose of determining a quorum as those Members ''chosen, sworn, and living,'' which has resulted in small periodic adjustments to the quorum number as individual Members die or resign. In the case of mass incapacitation, where Members would temporarily be 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 to this problem proposed in this rules change 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. For example, if terrorists launched a successful anthrax attack on a meeting of the Republican Conference and temporarily debilitated the 228 current Republican Members of the House, the remaining Members could meet, declare those Republican Members incapacitated, adjust down the quorum number to 104 (the majority of living House Members still able to perform their duties), and then conduct any and all business, including declaring war and electing a Speaker. Operating under this so-called ''provisional quorum,'' the House could pass bills with as few as 53 votes (a majority of 104 Members).

A problem the majority has ignored through this process is whether the Constitution allows the House to adjust its quorum number downwards to a figure significantly below 218 seats, a majority of the whole number of currently apportioned seats. Instead of honestly exploring this important question, the Rules Committee glossed over it. It called in one expert, the well-respected Duke Law School professor and former Solicitor General Walter Dellinger, who testified 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. Professor Dellinger's argument is that a diminished House is better than no House at all in an emergency situation and that a literal reading of the Article I quorum requirement could do irreparable damage to our system of government, which the Founders could not have intended.

While Professor Dellinger is a well-regarded jurist and I accept his pragmatic reading of Article I for the purpose of this proposed rule change, I must note that other experts are less confident that lowering the quorum is constitutionally sound. These scholars argue that a plain reading of article I, sec. 5, cl. 3 of the Constitution (''a Majority of each [House] shall constitute a quorum to do Business'') leads to the obvious conclusion that the House can only do business when a majority of its whole, apportioned number is present. The Founders viewed the House as the most purely republican, representative department of the Federal Government, whose Members were most directly accountable to what James Madison called the ''great body of the people'' of the United States. They argue that allowing a small fraction of Members to pass laws and do business violates the fundamental, constitutional function of the ''People's House.''

Professor Cass Sunstein of the University of Chicago Law School, for example, in testimony he submitted to Senator CORNYN and

the Senate Judiciary Committee, takes the position that the House rulemaking power may extend to lowering the quorum, but concedes, ''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).''

While I personally believe the House's constitutional rulemaking power allows the House to temporarily lower its quorum number in extraordinary circumstances, we have no assurance our courts and the ''great body of the people'' of the United States will accept as legitimate the laws we pass with a significantly reduced quorum. In addition, Rules Committee Republicans' assurances that these proposed rules changes are non-justiciable are less than meets the eye. They are correct that under our Federal case or controversy jurisprudence, it would be almost impossible to challenge the rules themselves, especially before they are invoked. But they gloss over the fact that citizens injured by laws passed by a House with a diminished quorum would likely have justiciable claims.

Consider the following example: During a period of mass incapacitation, a Congress with a diminished House imposes a punitive commercial tariff on a foreign country Congress feels has not been sufficiently helpful in the War on Terrorism. A businessman in New York who imports goods from that country is economically damaged by the tariff. He goes to a Federal court with a claim that the tariff is invalid because the House approved the tariff without a Constitutional quorum and requests an injunction blocking enforcement of the law. This businessman would almost certainly have a justiciable claim. His facts would be identical to those of the case that resulted in the famous U.S. v. Ballin case, in which the Supreme Court held that the House's rulemaking power allows the Speaker broad latitude in determining the best way to count Members to determine that a majority of the House is present and there is a quorum to conduct business. The Ballin case did not reach the question of what the term ''majority'' means or whether the Speaker has the power to change it to a number other than the majority of the whole number of apportioned House seats. That would be the question the injured New York businessman asked our courts to decide and an adverse decision could cast into doubt all of the actions of a House operating with a provisional quorum.

I run through this scenario not just to illustrate that we should not presume that this rule change will survive a legal test just because the Majority has found one respected legal expert who believes it is constitutional. The actions of a House meeting with a diminished quorum will be subject not just to judicial scrutiny, but to the scrutiny of the American people. Will the American people accept as legitimate the actions of a House made up of a fraction of its 435 seats? Will the American people accept laws passed by House Members who represent only a fraction of Madison's ''great body of the people'' of the United States? I feel that a diminished House, especially a diminished House whose basic partisan makeup is significantly altered, could be subject to suspicions that it is acting not in the best interests of the country, but in the interests of the party that was fortunate to lose fewer of its Members in an enemy attack.

The rules change proposed in various drafts of this resolution does not reassure me that the Republican leadership is sufficiently sensitive to this concern. Under its proposed rules change, in the aftermath of a calamity, the House would first use the power it has under clause 5 of rule XX to assemble a quorum through compelling the attendance of absent Members. Under this provision, a majority of 15 Members may vote to send the Sergeant-at-Arms out to arrest those Members able to attend, and to otherwise account for 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. During this period, the Speaker and other House officers would be working to determine the nature and extent of the crisis. At the end of this 3-day quorum call, the Speaker could then 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 provisional 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. With this new, smaller provisional quorum, the House would then be able to conduct any business it can currently conduct with a quorum of the whole number of the House.

I acknowledge and am grateful that Rules Committee Republicans improved on earlier drafts of this resolution by providing more detail on what information the ''catastrophic failure report'' should contain and by adding a requirement that the Speaker consult with the two party leaders when he or she receives and then announces the content of the report. But I must point out that the current language does not adequately address my fundamental concern that the actions of a House operating under a provisional quorum will be vulnerable to charges of illegitimacy and political manipulation.

Under the scheme set up in the draft resolution, the Speaker would still have 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 I respect the fact that the Speaker is the constitutionally created presiding officer of the House, I would also note the obvious fact that the Speaker is the leader of the majority party in the House. I am concerned that 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.

During our discussions over the wording of this rules change, I proposed language to ensure that the decision to declare a calamity or declare Members incapacitated would occur in a manner that would be most likely to garner broad support and legitimacy in the House and in a country struggling in the aftermath of an enemy attack. To have legitimacy, we must be able to show Members from both parties and the American public that our decision to operate under a reduced quorum was based solely on our solemn duty to preserve the institution of the House. I proposed simple language I felt would turn a unilateral decision-making process into a consensus-building, institutional process designed to garner the broadest possible support. My version would require the Speaker not to just 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.

The testimony of the House Attending Physician, Dr. John Eisold, during the April 2004 hearing, highlights my concerns about a process that gives the Speaker unilateral decision-making power. Dr. Eisold's testimony made it clear that determining a Member's ability to serve in the House after a calamity could become a very controversial matter. While medical professionals like Dr. Eisold could provide the Speaker with an ''objective description of the state of a member's health as determined by the medical establishment,'' the determination of incapacitation is a subjective judgment, ''made by non-medical people but based on meaningful and accurate medical input.''

During Dr. Eisold's testimony, both Mr. HASTINGS of Washington and Mr. MCGOVERN discussed the dangers inherent in this determination-of-incapacity process.

They posed a very important question: How do we prevent the process from becoming one where Members are declared incapacitated based on their party rather than their medical condition? For example, what credibility would the Speaker's decision have to declare a Member of his or her own party fit to serve in the House, but to declare a Member of the other party with similar symptoms incapacitated? I believe the only way to conduct this process in a manner that promotes legitimacy is to require that not just the Speaker, but the leaders of both parties in the House, agree that a certain Member is or is not able to report for work. An incapacitation list approved by the Speaker, as well as concurred in by party leaders, would reassure Members of both parties and the public that the process has been based only on the best available medical information and the best judgment of their Congressional leaders.

Regrettably, but not surprisingly, Republican Members of this Committee have resisted my suggestion. I have argued that changing the procedure from one where the Speaker merely consults with party leaders to one where he or she must obtain their concurrence would transform a potentially politically divisive moment into a moment where Congressional leaders from both parties would be able to assure the American people that the legislative branch has survived an enemy attack and is open for business. It would foster a process that would result in a show of solidarity and strength like the one Members of Congress showed on the Capitol steps after the September 11 attacks. I believe that any Speaker,

Democrat or Republican, who found her or himself in this situation, would welcome the political and moral support of senior House Members from both parties.

An objection I have heard to my concurrence language is that it improperly limits the Speaker's constitutional power to preside over the House. The Constitution and our House Rules give the Speaker extensive power to organize the House, to conduct the House's day-to-day business, and to maintain order in the House. Under my proposal, with the concurrence of the majority and minority leaders, the Speaker would retain the ministerial power to issue the calamity report, trigger the provisional quorum process, preside over a diminished House, and control the House's agenda. I must restate the obvious point, however, that this resolution is not a run-of-the-mill rules change. This resolution sets the House on a course into uncharted constitutional territory, where questions concerning the legitimacy of its actions could be very serious. The Speaker's powers to preside over the House would mean very little if the House were discredited by actions the American public broadly viewed as partisan and opportunistic.

Furthermore, I would point out that while the Speaker's powers to run the House are broad, they are finite. In a variety of ways, our standing House Rules protect Members from what Jefferson called the ''caprice of the Speaker.'' The House can vote to remove the Speaker and can reverse the Speaker's rulings on points of order and calls to order. The rules change contemplated in this draft resolution, however, makes an extraordinary departure from the principle that the House has the right to rein in a Speaker who is abusing her or his power. The resolution makes unappealable the Speaker's decision to announce that a calamity has occurred and that certain Members are incapacitated. While I agree that the exigencies of a catastrophic situation might require that the Speaker be able to act quickly and decisively after the House has decided that a calamity has occurred, the Speaker risks losing the confidence of Members and the American public if he or she acts without the concurrence of party leaders, in a manner unhappy Members or outside critics could characterize as irresponsible or capricious.

I must also point out that any taint of illegitimacy or political opportunism generated by the House in the wake of a calamity could easily spread to the Executive Branch. Under our current Presidential succession statute, the Speaker of the House is the third in line to succeed as President and a newly elected Speaker would bump any Cabinet Secretary lower in the line of succession who has taken the office of President in accordance with the statute. In other words, a House operating under a provisional quorum in the wake of a catastrophic event that has not only killed or injured many Members of Congress, but has also killed the President, the Vice President, and the Speaker, could have the power to choose the new President through the election of a new Speaker.

Under clause 8(3) of rule 1, which we adopted at the beginning of the 108th Congress, if the Speaker perishes or is seriously injured in an attack, the Member at the top of the successor list the Speaker has delivered to the Clerk becomes Speaker pro tempore (with all of the authority of the Office of Speaker) until the House elects a new Speaker. This raises the question of whether the temporary Speaker pro tempore would be in the line of succession and therefore become President. This possibility leads to another vexing question: would the temporary Speaker pro tempore be bumped from the Presidency by the new Speaker elected by a House operating under a provisional quorum? Another troubling scenario would be one in which the Speaker and the Members he or she has named as successor Speakers pro tempore all perish or remain seriously injured in an enemy attack. As our current Parliamentarian John Sullivan testified at the April hearing, in this case, the Clerk would take the Chair, the House would elect a new Speaker, and then reorganize in the same way the House reorganizes at the beginning of each Congress. A Speaker elected in this fashion would also be in the line of Presidential succession under current law.

These startling possibilities make me more insistent than ever that the process of declaring a calamity and conducting business in a diminished House be one that garners the broadest possible confidence and support. The aftermath of an enemy attack is the worst possible time for our country to endure a debate over whether the sitting President properly holds the office.

Finally, I find it curious that the Republicans have resisted accepting our language to include leaders from both parties in the decision to trigger the reduced quorum procedure. Their own expert, Professor Dellinger, proposed it in the testimony he submitted to the Committee. 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 or more members of the minority party's leadership, from a list chosen ahead of time.'' In other words, Committee Republicans have explicitly rejected the single most important policy recommendation their star witness, Professor Dellinger, made in his testimony.

I think when he used the term ''factional reasons,'' Professor Dellinger was choosing his words very carefully. He was no doubt referring to James Madison's famous discussion of the dangers of faction to the republican form of government in Federalist 10. One of the most persistent problems in the governments of his time, Madison wrote, was: ''that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority.''

There is no subject on which it is more important for Congressional leaders to set aside their partisan differences and their instinct to turn everything into a ''factional'' dispute than the Continuity of Congress. Unfortunately, I feel that House Republicans have, at least temporarily, succumbed to their partisan instincts and have produced bills and resolutions that reflect the ''superior force of an interested and over-bearing majority'' rather than a good faith effort to protect and preserve the House of Representatives and its indispensable role in our constitutional system. In its current form, the draft rules change lacks the tools a post-calamity House would need to preserve our beloved institution and to demonstrate to the American public it has risen above its partisan differences for the sake of our Nation. I sincerely hope that a final version of this rules change, whether it is adopted in the final days of the 108th Congress or in a future Congress, reflects the spirit of unity, patriotism, and duty to this House that this issue deserves.

Mr. MCGOVERN. Mr. Speaker, our Constitutional Framers drafted a living document that, while not perfect, created a vibrant representative democracy. They crafted the Constitution as a document that could be improved over the course of history. The Framers themselves would probably agree that the Constitution, as originally drafted, would not be perfect into perpetuity. Indeed, in Federalist 43, James Madison states ''that useful alterations will be suggested by experience, could not but be foreseen.'' The Framers improved the Constitution by amending it with the Bill of Rights. Since this important document was signed in 1789, a total of 27 amendments have been added.

As Members of Congress, we take an oath to uphold and defend that Constitution. It is our duty to take the proper actions to ensure that our democracy and our way of life are preserved for the future. The tragic attacks of September 11, 2001, and the threat of future attacks require that we ensure that there is a continuity of the government created by the Framers.

Before September 11, 2001, the United States had withstood a civil war, attacks on its soil and attacks upon Washington, DC and the Capitol itself. But the continuity of government established by the Constitution, and the ability of the Congress to fulfill its Constitutional duties, has never been more at risk from attack. Today, we live with the grim knowledge that a terrorist attack could take place again here in the United States and that terrorists may attempt to attack and destroy this Capitol Building. And it is with this understanding that the Congress must ensure that the government established by the Framers continues well into the future.

The Framers and the Congress, over the past 216 years, created a presidential line of succession in case the President is killed or dies in office. Article II, section 1, paragraph 6 establishes: the Vice President as the next in line to take over the presidency in case the President is removed from office for any reason. This same clause also gives Congress the power to establish the line of succession beyond the Vice President, and the Congress acted by creating this line of succession, as established in chapter 3, section 19 of the U.S. Code. There are safeguards in the Constitution and established by law should a President become unable to fulfill his or her constitutional duties, die, or be removed from office. Simply, there is a plan to ensure that the executive branch can continue to exist should something happen to the President.

The Constitution also established the bicameral Congress—the House of Representatives and the Senate—and established that the House is a body that can only be constituted of Members who are directly elected by citizens of the United States. The Constitution says that a vacant House seat can only

be filled by direct election, and a seat can only become vacant at the end of a 2-year term established in article 1, section 2, paragraph 1 of the Constitution or with the removal of a Member of Congress either by death, resignation, declination, withdrawal, or by expulsion.

However, as I've already stated, the Framers of the Constitution never planned for an event, including an attack on this country, that could cause mass death or incapacitation of Members of Congress. After September 11th, we need to ask ourselves how we can preserve our government, as designed by the Framers, in the wake of a catastrophic event. And we need to do so with an eye looking toward the future.

A key problem created by an attack that kills or incapacitates more than half of the Members of Congress actually lies in the way a quorum of the House is defined. It may sound arcane to some, but establishing a quorum is vital to the way our government works. If the House were not able to establish a quorum, this body could not vote on legislation. In the wake of a catastrophe, the House must be able to act. However, without a quorum, the U.S. government could grind to a halt until a quorum is actually established. In other words, if this country were attacked again and the House could not establish a quorum, we could not pass important legislation like emergency appropriations, improvements to already established security laws, or even a declaration of war.

At the beginning of the 108th Congress, the House enacted an important rule change that codified a long-standing House precedent allowing the Speaker of the House to reduce the number of the quorum by one for each vacant seat in the House. This rule change took place with the adoption of H. Res. 5, the resolution adopting the Rules of the House for the 108th Congress.

The codification of this precedent is important, but it does not address the problem of incapacitation. If any number of Members of Congress were killed in a terrorist attack, this new rule change would allow the Speaker to reduce the whole number of the House that determines a quorum. But what would happen if an attack occurred in the United States and more than 218 Members were alive but not able to return to the House chamber to vote? The reasons for this could be anything from an attack that results in over 218 unconscious Members to a breakdown in the transportation system preventing Members of Congress from returning to Washington.

While this issue may not seem important compared to the issues that dominate the news these days—the continued instability and rising death toll in Iraq, the economic challenges in this country, and the presidential race, just to name a few—this is something the House of Representatives must address. Continuity of Congress, the ability to preserve the American government as established by the Framers in the Constitution, is an issue that transcends partisan politics and while we must take action to persevere the continuity of Congress, it is essential that we do so in a bipartisan way.

I strongly believe the House must act on continuity of Congress in a bipartisan fashion. There cannot be any other way for the House to act and for those actions to be considered legitimate. Simply, any rule change of this magnitude must transcend partisan politics.

But I must express my concerns with the public consideration and discussion of this issue and with the current draft that attempts to address incapacitation and a provisional quorum. I want to clarify that I am not making these statements as a Democrat or as a Member of the minority party. Rather, I am making these comments as one Member of Congress committed to defending the Constitution and protecting this institution and this country.

Mr. Speaker, I am dismayed that the Rules Committee only held one hearing on this issue. To Chairman DREIER's credit, the panel was distinguished, and the discussion was fairly comprehensive. But the reality is that one hearing on this issue is inadequate. We heard from then-Parliamentarian Charlie Johnson and members of his staff, former acting Solicitor General of the United States Walter Dellinger, and the Attending Physician of the House, Dr. John F. Eisold. While the discussion was lively, I don't believe it explored the topic of incapacitation to the fullest extent possible.

I am most concerned about Professor Dellinger's testimony. Unfortunately, the Republican majority on the Rules Committee decided to invite only one outside witness—Professor Dellinger. This witness, while well-informed and knowledgeable on this subject, was clearly brought in to validate the majority's views. No other outside witnesses were invited to testify.

Professor Dellinger is of the opinion that to address the problem of incapacitation, we only need to amend the quorum requirements in House rule XX. There are other experts, constitutional scholars and other lawyers including some congressional staff, who believe that such a change is unconstitutional and that the only way to change the quorum requirement is to amend the Constitution.

Amending the Constitution is serious business. Like Madison, I believe that amending the Constitution should be based on experience, and I strongly believe amending the Constitution should not be a knee-jerk reaction to a perceived problem. But unlike other proposed constitutional amendments that have been proposed in this Congress, the constitutional amendment to preserve the continuity of Congress, and the continuity of the American government as a whole, raises important concerns and deserves to have a thorough hearing and thoughtful discussion. Of course, the devil is in the details and the specific language of any proposed amendment is vital. But preserving this country as it was founded is one of our responsibilities as Representatives of the American people. I want to make clear that I'm not advocating for or against a constitutional amendment, but only that I believe it is a topic that deserves a fair and comprehensive hearing.

Unfortunately, it appears that the Chairman and some members of the Rules Committee and the Republican leadership have come to the conclusion—without comprehensive hearings—that a constitutional amendment is not needed and that all we need to address these challenges is a change in the quorum definition in the House Rules.

Along with my concerns that the Rules Committee only held one hearing, Professor Dellinger said something else that I fully support but, unfortunately, confirms to me that this process started off on the wrong foot. In his testimony, Professor Dellinger said that any change in the House Rules must be bipartisan and that there must be a bipartisan consensus before any change is made. Unfortunately, the Republican majority on the Rules Committee decided to share a draft of the proposed rule change with Professor Dellinger prior to the sharing it with the Democrats on the Committee. I, for one, don't think such secrecy is considered bipartisan. I, however, believe that this is water under the bridge and that we must move past such events and deal with the issue at hand, which is guaranteeing the continuity of Congress in case of a catastrophic terrorist attack. I believe we still can work together and produce a true, bipartisan rule change.

Mr. Speaker, Chairman DREIER and his staff have drafted a proposed rule change that, except for one provision, is a good proposal. I am pleased that this proposed change has language defining the circumstances under which this process can be invoked. This proposal includes time limitations on the calls of the House required to determine whether there is a real quorum in the House. Should a quorum not be attained, the Sergeant-at-Arms will compile a report documenting the status of every Member currently elected to the House. I believe these are all good provisions and I'm pleased that Chairman DREIER and the Republican leadership worked with the Democratic staff to improve these provisions over the past few months.

However, the proposed rule change, as currently drafted, allows the Speaker of the House, after he receives the catastrophic quorum failure report from the Sergeant-at-Arms, to unilaterally declare that a quorum has not been attained and begin the process to reduce the total number of Members required for a quorum under catastrophic circumstances. The latest draft shared with me requires the speaker to consult with the majority leader and the minority leader on the content of the report, but it does not require that the concurrence of the speaker, majority leader and minority leader.

Mr. Speaker, I cannot support this proposal without the inclusion of "concurrence" of the speaker, majority leader, and minority leader.

The need for concurrence of both parties in the House is not just a partisan statement made by a Member from the minority party, but a real concern made by someone who reveres and respects this institution. And I'm not the only person who believes this. I want to read directly from Professor Dellinger's prepared testimony before the Rules Committee on April 29, 2004:

> 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. Unlike the traditional rule, where the quorum calculation is based on strictly objective measures such as death, the reduced quorum rule for extraordinary circumstances would be based on less clear-cut circumstances, presenting a heightened danger of manipulation. This loss of objective standards may be necessary in order to deal with the special problem the rule is designed to address; but Congress should certainly take care to minimize the risk of manipulation. For that reason, I 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 or more members of the minority party's leadership, from a list chosen ahead of time.

This need not be viewed as an encroachment on the Speaker's or the majority party's authority.

There is a real danger that, after an attack or other national catastrophe, any action taken by the speaker without the concurrence of the minority leader could have the perception of partisan politics. This is true no matter which party controls a majority of seats in the House.

In times of crisis, any action by the House of Representatives must be bipartisan. There cannot be any perception that the majority is using any tool as part of a partisan power grab. The American public wants to be reassured that the House is acting in the best public interest; they want partisan politics to be put aside during a national crisis. They simply want to be safe, secure, and reassured that the American government will respond to their needs.

After September 11, 2001, the House came together and acted as one unified body. We put partisan politics aside. We held joint press conferences, we received joint briefings, and we conducted joint strategy meetings. Unanimity and consensus is vital during a national crisis. The unified message and unified actions—the one voice—coming from the House of Representatives after September 11, 2001 was reassuring to the American people.

Any action taken by the speaker of the House—irrespective of that speaker's party—that is not taken with the concurrence of the minority leader could be seen as inappropriate by the American people.

Requiring the concurrence of the minority leader puts the needs of the country ahead of the threat of partisan politics, and it is a necessary protection against anyone who may want to abuse our democracy during a time of national crisis.

Mr. Speaker, although I'm disappointed that it's taken this long to act on the issue of incapacitation—it's been over 3 years since the attacks of September 11—I'm pleased that the Rules Committee is finally acting on this important issue. I hope the chairman and the Rules Committee will look to the future, and realize that concurrence is an important part of this process that it is vital to show the American people that the Congress can put partisan politics aside in the time of crisis.

I want to thank the chairman for organizing this special order tonight. I look forward to working with him on this issue, and I hope he will take my views—and those of my Democratic colleagues on the committee—into account as he finalizes this proposal.

NEW PARTNERSHIP FOR AMERICA'S FUTURE

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under the Speaker's announced policy of January 7, 2003, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, earlier today a united Democratic Caucus went to the steps of the U.S. Capitol right outside these doors and unveiled our New Partnership for America's Future. This partnership reaffirms House Democrats' commitment to six core values and serves as a road map of the priorities we would focus on if the American people voted for a Democratic majority in November.

The announcement of this new partnership was necessary today because a large majority of Americans have lost faith in Congress. Over the past decade, Republicans have controlled the people's House and have often strayed from these core American values. My Democratic colleagues and I have been fighting for these causes for many years, but this is the first time that we have unveiled a partnership with the American people, a promise, if you will, that if the American people put their trust in us and elect a Democratic majority this November, we will work with them as partners to make their lives and our government better.

Mr. Speaker, the House Democrats are united, focused, and totally committed to taking the bold steps needed to strengthen the middle class that is the heart of our democracy. It reaffirms the commitment of House Democrats to six core values: one is prosperity, two is national security, three is fairness, four is opportunity, five is community, and six is accountability.

Mr. Speaker, our New Partnership for America's Future begins with our commitment to promoting prosperity for every American, and this poster which I have which I am going to go through essentially outlines each of the six values that are part of the Democrats' New Partnership for America's Future.

The first one, prosperity, says ''providing all Americans with the opportunity to succeed and to live a secure and comfortable life, including good jobs here at home, affordable health care, a growing economy with stable prices, investment in new technologies, and fiscal responsibility in government.''

Mr. Speaker, in my home State of New Jersey, over 71,000 manufacturing jobs have been lost over the last 4 years, and more than 214,000 New Jerseyans are still looking for work. Yet House Republicans have missed every opportunity to jump-start our economy. Instead, House Republicans and President Bush continue to insist that our economy has turned the corner. Today, families are being squeezed by falling incomes and rising costs. The typical family's income has fallen more than $1,500 under George Bush and congressional Republicans, and the jobs that the Bush economy is creating are paying low wages, $9,000 less than the old jobs that they have replaced.

House Democrats would promote prosperity by creating new jobs, enacting middle-class tax relief, and rewarding companies that create jobs here at home. If Democrats control the House, we promise the American people that we will create 10 million new jobs over the next 4 years. Democrats want to reform the Tax Code to reward companies for creating secure jobs for Americans here in the United States. And Democrats want to assure access to capital for small businesses to create jobs and serve new markets. We also want to support fair wages with good benefits so no one goes to work every day and comes home poor and dependent on public services.

And, Mr. Speaker, the second value that House Democrats promise to focus on is our Nation's national security. And again I have the poster here that I would like to put up, Mr. Speaker, on the national security issue. And as we can see, it says, ''Guaranteeing military strength second to none, stopping the spread of weapons of mass destruction, building strong diplomatic alliances to protect America's national interests, and collecting timely and reliable intelligence to keep us safe at home by preventing terrorist attacks before they occur.''

Mr. Speaker, all Americans are proud of the more than 138,000 brave men and women who are serving their country in either Afghanistan or Iraq. But President Bush and House Republicans sent them into a war in Iraq without providing them with the resources and equipment they need to complete their mission successfully and come home safe. Despite all the bad news out of Iraq in the last couple of months, it is clear President Bush has no strategy for success in Iraq.

Over the past week, some of the Republican Party's most experienced Senators on national security issues, and I mention Senators MCCAIN, HAGEL, and LUGAR, have come out and told the American people that things are not going well in Iraq. Yet President Bush and Republicans here in the House of Representatives continue with their same old happy talk about how the war is going according to President Bush's plans.

The fact is the war in Iraq has made us less safe. The President has ignored more pressing dangers like the nuclear threats that have increased in Iran and North Korea. International terrorist cells expand on a daily basis, and we have divided our friends and united our enemies.

Democrats strive to continue to build an American military second to none. Along with nations around the world who are committed to freedom and security, we also guarantee that all of our military forces will possess the most effective equipment available. We will also protect the homeland by making sure that every container and ship is secure before entering an American port, by inspecting all airline cargo, and by preventing the technology of weapons of mass destruction from falling into the hands of terrorists.

Unlike House Republicans, we as Democrats also plan to honor every American veteran and their family by keeping our commitments to those who have served and sacrificed for our country. It is not fair that America's veterans put their lives on the line in battle only to return to the United States and realize the same government that sent them off to war now refuses to abide by its commitments.

That brings me to my third value. I see some of my colleagues are here, though.