

To: Members of the Modernization Subcommittee, Committee on House Administration

From: Tom Wickham, former House Parliamentarian, SVP, U.S. Chamber of Commerce

Date: September 18, 2024

---

Tom Wickham served in the Office of the House Parliamentarian from 1995-2021 including as Parliamentarian from 2012-2020.

I am honored to discuss reflections on the rules changes that occurred following the terrorist attacks of 9/11 and the challenges in continuity of government that face the House today. As a retired Parliamentarian of the House, I approach this topic not as an advocate or an academic but instead as a former practitioner sharing the perspective of an office dedicated to advising and guiding the institution. In terms of this narrow but critical vantage point, there is no substitute for the guidance of the current Parliamentarian of the House Jason Smith and that wonderful team as the House seeks to engage on this important topic.

The House is fortunate to have a comprehensive history of the House's procedural action in response to 9/11 transcribed in the [testimony](#) of George R Rogers before the Select Committee on Modernization on April 6, 2022 and the 2006 College of William and Mary law review [article](#) on the provisional quorum rule by John B Williams. The institutional mindset of the House after 9/11 was focused on preventing and preparing for another terrorist attack and the institutional offices carried out related operational and legislative activities. These activities ranged from the assignment of individual "rubble whistles," flashlights, and gas masks to Members and staff to mammoth investigative efforts by the 9/11 Commission and legislative efforts to establish a Department of Homeland Security – which would be the largest government reorganization since the National Security Act of 1947.

The central procedural organizing force in the House was the continuity task force headed by Rep. Christopher Cox (R-CA) and Rep. Martin Frost (D-TX). Despite the weight of 9/11 and urgency to ensure continuity in preparation for another attack, the task force was not myopic or rushed and deliberated for six months on other historic "catastrophic circumstances" including the House's response to the Civil War and the flu influenza epidemic of 1918. The greatest challenge for this task force being the lack of a procedural foundation from which to build upon with scant procedural tools including a single statement glued into the Parliamentarian's Manual citing the "inherent authority of the chair" to declare a recess in the event of danger to the body and a pollyanna hope for unanimous consent or a handshake agreement that no attending Member would raise a point of no quorum as legislation was passed with a quorum being presumed.

With bipartisan spirit driving focus and collaboration, the great cleave in the Cox-Frost task force became how to deal with the constitutional quorum requirement in the event of large amounts of deaths or incapacitations. The quorum requirement, the responsibility to preserve the government, the House's history of elected membership, and the House's constitutional authority to make its own rules provided too complicated for the Cox-Frost task force to make a recommendation. The constitutional dividing line was marked by the Cox-Frost submission to the Record on November 14, 2002 of three draft rules characterized as the "least

constitutionally intrusive” group of recommendations. This foreshadowed a quorum-related change as a “more constitutionally intrusive” change that was worthy of greater scrutiny.

The importance to the institution of the “quorum issue” was highlighted by a hearing of the Committee on Rules chaired by Rep. David Dreier (R-CA) on April 29, 2004 featuring testimony from the sitting Parliamentarian Charles W. Johnson, III – one of only three such testimonial appearances by the Parliamentarian in memory. In his testimony on the provisional quorum discussion draft, Johnson emphasized the prudence of the House acting in advance of a crisis and that he did not have a clear answer to the constitutionality of the proposed rule but that the constitutional advisability of such a change could be “initially” determined by the House in its debate and vote on the rules change. The hearing included a step-by-step guide to the draft rule by then Deputy Parliamentarian John Sullivan which noted that the rule was anchored in constitutionally-prescribed motions to adjourn and motion to compel attendance. The rule also featured an extremely slow timeline to completion with frequent escape hatches, intermittent updates on the security situation from House officials, and that the provisional quorum would be eventually set by the attendance of the Members themselves. That testimony marked the final commentary from the Office of the Parliamentarian on the rule.

The House is fortunate in 2024 that there is a stronger foundation for action than existed in the years following 9/11. As it continues into 2025 and beyond, the House can review its rules with the experience of the pandemic and historical and constitutional guidance on its proxy voting machine. It can reevaluate the catalog of triggering catastrophic condition with decades of technical experience couched in a Department of Homeland Security. The House also has the opportunity to review the multiple time layovers in the provisional quorum rule to conform with modern communication abilities.