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INTERIM REPORT OF THE SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007

SEPTEMBER 27, 2007.—Referred to the House Calendar and ordered to be printed

Mr. DELAHUNT, from the Select Committee to Investigate the
Voting Irregularities of August 2, 2007, submitted the following

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INTRODUCTION: CREATION OF THE SELECT COMMITTEE

On August 3, 2007, the House by voice vote, agreed to H. Res. 611, creating the Select Committee to Investigate the Voting Irregularities of August 2, 2007 (the "Select Committee"). The resolution bestowed upon the Select Committee authority to "investigate the circumstances surrounding the record vote requested by the gentleman from California (Mr. Lewis) on the motion to recommit to H.R. 3161, including the Chair's ruling over the objections of the Parliamentarian." The Select Committee was directed in the resolution to make an interim report to the House not later than September 30, 2007, and a final report not later than September 15, 2008, "regarding the actions of any Members, officers, or employees of the House engaged in the disenfranchisement of Members in voting on the question; and recommending changes to the rules and procedures of the House of Representatives necessary to protect the voting rights of the constitutionally elected Members chosen by the people of the United States of America."

The House's agreement to the resolution on August 3 followed a sequence of events on August 2 related to Roll Call Vote No. 814 on the motion to recommit H.R. 3161 with instructions offered by Representative Jerry Lewis (the "Motion to Recommit"). Following a voice vote on the Motion to Recommit, Mr. Lewis demanded the yeas and nays, which were ordered, and the vote was taken by electronic device. The time allowed to vote was a minimum of 15 minutes, as provided for by clause 2(a) of rule XX. Determining as precisely as possible what happened over the several minutes following the Speaker pro tempore's announcement, as shown in the Congressional Record, that two minutes remained for Members to vote on the Motion to Recommit is one important purpose for which the Select Committee was established: to report on actions of Members, officers, or employees of the House engaged in the disenfranchisement of Members in voting on the question. During the vote in question the Speaker pro tempore first announced that there were 214 yeas and 214 nays and that the motion was not agreed to and the Speaker pro tempore subsequently announced that the vote was 212 yeas and 216 nays and that the motion was not agreed to. The proponent of H. Res. 611 has alleged that the Speaker pro tempore's first announcement of the vote was erroneous and that the motion had been agreed to because the electronic voting display read "FINAL 215-213."

Determining as precisely as possible what happened over the several minutes following the Speaker pro tempore's announcement, as shown in the Congressional Record, that two minutes remained for Members to vote on the Motion to Recommit is also important for the other purpose for which the Select Committee was established: to make recommendations, following its investigation, of changes to rules and procedures of the House that are needed to protect Members' voting rights.

The text of the resolution as agreed to by the House is as follows:

H. RES. 611

In the House of Representatives, U.S.,

August 3, 2007.

Resolved, That—

(1) the Officers of the House of Representatives are immediately directed to preserve all records, documents, recordings, electronic transmissions, or other material, regardless of form, related to the voting irregularities of August 2, 2007;

(2) there is hereby established a select committee to investigate the voting irregularities of August 2, 2007 (hereinafter referred to as the "select committee"). The select committee shall be comprised of 6 Members, of which 3 Members shall be appointed by the Speaker and 3 by the Minority Leader. The select committee shall—

(A) investigate the circumstances surrounding the record vote requested by the gentleman from California (Mr. Lewis) on the motion to recommit to H.R. 3161, including the Chair's ruling over the objections of the Parliamentarian; and

(B) make an interim report to the House not later than September 30, 2007, and a final report not later than September 15, 2008—

(i) regarding the actions of any Members, officers, or employees of the House engaged in the disenfranchisement of Members in voting on the question; and

(ii) recommending changes to the rules and procedures of the House of Representatives necessary to protect the voting rights of constitutionally elected Members chosen by the people of the United States of America; and

(3) the select committee shall have the same powers to obtain testimony and documents pursuant to subpoena as authorized under clause 2(m) of rule XI.

On September 5, 2007, the appointments to the Select Committee made by the Speaker and the Minority Leader pursuant to H. Res. 611 were published in the Congressional Record. The Speaker appointed Mr. Delahunt and designated him Chairman of the Select Committee. The Speaker also appointed Mr. Davis of Alabama and Ms. Herseth Sandlin to serve on the Select Committee with Mr. Delahunt. The Minority Leader appointed Mr. Pence and designated him Ranking Member of the Select Committee. The Minority Leader also appointed Mr. LaTourette and Mr. Hulshof to serve on the Select Committee with Mr. Pence.

STATUS OF THE SELECT COMMITTEE'S INVESTIGATION

During informal preliminary discussions, including one that took place on September 20, 2007, the Members of the Select Committee expressed their shared desire to provide a benefit and service to the House of Representatives through their work on the Select Committee. The Members agreed to conduct a thorough, thoughtful, transparent investigation of the circumstances surrounding House Roll Call Vote No. 814, to act expeditiously to complete the Select Committee's work and, as appropriate, to make recommendations to the House that might contribute to an improvement of the House's rules, procedures, or practices.

During the preliminary discussions, the Members set the date of the Select Committee's organizational meeting and first hearing for September 27, 2007. Individual Members of the Select Committee agreed to undertake specific assignments in preparation for the organizational meeting and hearing. Chairman Delahunt indicated his intention to designate Representative Davis to be Vice Chairman of the Select Committee, pursuant to clause 2(d) of rule XI. Later, Ranking Member Pence designated Representative LaTourette to be Vice Ranking Member of the Select Committee.

Following a discussion about staff and other resources, the Members agreed to request House leadership assistance in obtaining initial resources for the Select Committee.

The Members of the Select Committee also began to prepare a roadmap of the investigation. All Members expressed strong interest, in particular, in receiving an orientation to the House Floor, specifically to the Speaker's Dais, and a viewing, as a group, of the recording of the Roll Call Vote No. 814. With this information, the

Select Committee will begin to construct a time line of the circumstances surrounding Roll Call Vote No. 814.

At the Select Committee's hearing on September 27, the Select Committee was scheduled to receive testimony from The Honorable Lorraine Miller, Clerk of the House of Representatives and Mr. Russell Gore, Legislative Counsel to the Clerk of the House of Representatives regarding data, information and other evidence retained by the Clerk's office related to Roll Call Vote No. 814.

AREAS OF INVESTIGATION

The Select Committee plans to obtain information and hold hearings necessary to carry out its responsibilities under H. Res. 611. Four areas of investigation identified by the Select Committee are described briefly here, though in no way are these four areas intended to limit the Select Committee from following the evidence where it leads as it conducts its investigation.

Persons on the Speaker's Dais and Persons Responsible for Conducting a Vote. One major area of investigation for the Select Committee will be to determine who is customarily on the Speaker's Dais and each person's responsibility, including the presiding officer. Second, the Select Committee will determine which of these persons have duties relating to voting in the House and the Committee of the Whole, what those duties are, and when, where, and how those duties are carried out. Third, the Select Committee will determine the relationship between these persons in their execution of their specific duties related to voting in the House and the Committee of the Whole.

The Select Committee will also determine what other people, including employees of the House who are not on the Speaker's Dais but have duties related to voting in the House and the Committee of the Whole; what those duties are; and when, where, and how those duties are carried out. The Select Committee will also determine the relationship between these persons and the persons on the Speaker's Dais in their execution of their specific duties related to voting in the House and the Committee of the Whole.

The Select Committee will also determine the duties and authority of Members, leaders, and floor managers related to voting in the House and the Committee of the Whole.

This information is important to understanding the events surrounding the voting on the Motion to Recommit and to making such recommendations to the House as may be necessary to define and protect Members' voting rights.

Electronic Voting System. A second major area of investigation for the Select Committee is the operation of the electronic voting system for recording Members' votes in the House and the Committee of the Whole and the relationship of the system's operation to the duties for voting exercised by individuals on the Speaker's Dais and by individuals not on the Speaker's Dais. Parts of this investigation will examine:

- the tasks for which the electronic voting system was designed and features of the hardware and software to accomplish those tasks, including messages or reports on a vote before, during, and after the vote;

- the protocols for preparing and using the electronic voting system in the daily sessions of the House and the Committee of the Whole;
- the protocols for individuals on the Speaker's Dais to interface with the electronic voting system;
- the Members' interface with the electronic voting system in casting their votes;
- the use of information, by Members, leaders, and floor managers, generated by the electronic voting system during and after a vote; and
- documented instances of mistakes in the electronic voting system recording or not recording a Member's vote and accurately reporting vote totals and of other errors related to voting.

This information is also important to understanding the events surrounding the voting on the Motion to Recommit and to making such recommendations to the House as may be necessary to define and protect Members' voting rights.

Duration of a Vote. A third major area of investigation for the Select Committee is the duration of a vote and the duties and authority of the presiding officer and of other persons to determine when the opportunity of Members to vote closes. Clause 2(a) of rule XX states: "* * * the *minimum* time for a record vote or quorum call by electronic device shall be 15 minutes." Clause 9 of rule XX states: "The Speaker may reduce to five minutes the minimum time for electronic voting on any question * * *." (*Emphases added.*) A vote may last longer than fifteen minutes, five minutes, (or on occasions when a shorter time is used, such as two minutes) in order to accommodate Members who were not yet recorded or who wish to change their vote or perhaps for other reasons. Clause 2(a) of rule XX also states: "A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote."

In *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, a principal parliamentary reference of the House of Representatives, the parliamentarians have summarized House precedents to state:

* * * The Chair has the discretion to close the vote and to announce the result at any time after 15 minutes have elapsed or to allow additional time for Members to record their votes before announcing the result * * *. Thus, no point of order lies against the decision of the Chair in his discretion to close a vote taken by electronic device after 15 minutes have elapsed * * *.

Elsewhere in *House Practice*, the parliamentarians have summarized other House precedents to state: "A Member who has voted may change his vote any time before the final announcement of the result."

In addition, it has long been the practice of Speakers to insert in the Congressional Record in the first few days of a new Congress a statement of policies on aspects of the legislative process. Continuing this custom in the 110th Congress, Speaker Pelosi announced policies that were published in the January 5, 2007, Congressional Record.

Policy No. 6 deals with the conduct of votes by electronic device, and continued in effect, with modifications, a policy first announced by Speaker Gingrich on January 4, 1995. This policy states, in part:

* * * the Chair enlists the assistance of all Members in avoiding the unnecessary loss of time in conducting the business of the House. The Chair encourages all Members to depart for the Chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the cloak-rooms should not forward to the Chair requests to hold a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock. Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive in the Chamber. Members will be given a reasonable amount of time in which to accurately record their votes. No occupant of the Chair would prevent a Member who is in the Well before the announcement of the result from casting his or her vote.

A part of this area of investigation pertains to understanding the authority of the presiding officer under the rules and precedents of the House related to voting, as well as any informal practices exercised under that authority. Another part of this area of investigation relates to how Members learn whether time remains to record or change their votes, how these votes are cast and recorded, and how these votes are recorded in the electronic voting system.

This information is important to understanding the events surrounding the voting on the Motion to Recommit and how the House has balanced its accommodation of Members wishing to vote or change their vote with bringing a vote to a close. Such information is important for making such recommendations to the House as may be necessary to protect Members' voting rights.

Sequence of Events. What is learned from the three areas of investigation described above will enable the Select Committee to then fulfill the two purposes for which it was created: based on an investigation of circumstances surrounding the vote on the Motion to Recommit, report on actions by Members, officers, or employees of the House engaged in the disenfranchisement of Members in voting on the question, and recommend changes to House rules and procedures necessary to protect Members' voting rights.

The Select Committee will investigate the sequence of events surrounding the vote on the Motion to Recommit to establish a time line of events and to analyze these events within the context of the first three areas of investigation. The sequence of events includes the actions of Members in voting; the actions of persons on the Speaker's Dais and of persons not on the Speaker's Dais related to the conduct and duration of the vote; the operation of the electronic voting system, including messages and reports from the chair during and after the vote and the relationship of paper to electronic records; and the duration of the vote. As an aid to the Select Committee's investigation, H. Res. 611 directed officers of the House to "preserve all records, documents, recordings, electronic submissions, or other material, regardless of form, related to the voting irregularities of August 2, 2007". The Office of the Clerk

has provided communications to the Select Committee and testified regarding the information and material it has so far recovered, collected, and stored.

RECOMMENDATIONS TO THE HOUSE

The Select Committee will bring together the information learned from the first three areas of investigation in comparison with the actions that occurred surrounding the vote on the Motion to Recommit as the basis for any recommendations to the House on potential changes to House rules, procedures, or practices to protect Members' voting rights.

H. Res. 611 directs the Select Committee to “ * * * [recommend] changes to the rules and procedures of the House of Representatives necessary to protect the voting rights of constitutionally elected Members chosen by the people of the United States of America”. The investigation of the Select Committee will enable the Select Committee to discuss and determine what recommendations, if any, to make to the House in its final report.

COMMITTEE CONSIDERATION

The Select Committee met in open session on September 27, 2007, and, on the motion of the Chair, adopted this report by a voice vote, a quorum being present.

APPENDIX: HOUSE RULES RELATED TO VOTING

The Select Committee requested and received assistance from the Congressional Research Service in identifying House rules that pertain to voting in the House of Representatives and the Committee of the Whole. The House rules initially identified as relevant to the Select Committee's investigation include:

Clause 1 of rule III makes it a duty of a Member to vote:

Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

Clause 2 of rule III prohibits a Member from authorizing another person to cast the Member's vote or to record the Member's presence in the House or the Committee of the Whole, and prohibits any person from casting a Member's vote or recording a Member's presence in the House or in the Committee of the Whole.

Clause 6 of rule I directs the Speaker to put a question in a specified form:

* * * The Speaker shall put a question in this form: “Those in favor (of the question), say ‘Aye.’; and after the affirmative voice is expressed, ‘Those opposed, say ‘No.’” After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Clause 1(a) of rule XX provides for a division vote on the Speaker's initiative or by demand.

Clause 1(b) of rule XX pertains to a recorded vote, normally to be taken by electronic device:

If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

Clause 1(c) of rule XX states that, on a tie vote, a question loses.

Clause 2(a) of rule XX describes certain conditions related to a vote by electronic device, including the minimum time by which a vote by electronic device may be conducted and a restriction on the purpose for which a vote may be held open:

Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote or quorum call by electronic device shall be 15 minutes.

Clause 2(b) of rule XX deals with the situation in which the electronic voting system is inoperable, and allows the Speaker or the chairman of the Committee of the Whole House on the State of the Union to direct the Clerk to conduct a record vote or quorum call pursuant to clause 3 (call of the roll) or clause 4 (tellers).

Clause 6 of rule XX pertains to the situation where a quorum is not present on a vote in the House and objection is made that a quorum is not present. Subparagraph (a)(3) provides: "the yeas and nays on the pending question shall at the same time be considered as ordered." Certain procedures are also prescribed in this clause, and a motion to adjourn is made in order after Members have had the opportunity to vote but before the result has been announced.

Clause 8(a)(1)(A) of rule XX authorizes the Speaker, when a recorded vote or the yeas and nays are ordered, to postpone further proceedings "to a designated place in the legislative schedule within two additional legislative days" for eight questions specified in subparagraph (2). Paragraph (B) authorizes the Speaker, when a recorded vote or the yeas and nays are ordered, to postpone further proceedings on the question of agreeing to the Speaker's approval of the Journal "to a designated place in the legislative schedule on that legislative day."

Clause 8 of rule XX further regulates postponed votes. Under clause 8(b), "At the time designated by the Speaker for further pro-

ceedings on questions postponed under paragraph (a), the Speaker shall resume proceedings on each postponed vote.” Under paragraph (c), the Speaker is permitted to reduce to five minutes the minimum time for electronic voting on a vote on a question postponed under clause 8 “that follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in a series of questions is 15 minutes.” Paragraph (d) states the condition under which further proceedings on postponed questions become the unfinished business of the House on the next legislative day.

Clause 9 of rule XX permits, with notice, a five-minute vote on any question arising without intervening business after an electronic vote on another question:

The Speaker may reduce to five minutes the minimum time for electronic voting on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote.

Clause 10 of rule XX requires automatic yeas and nays in certain circumstances:

The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

In addition to provisions in rule XX that relate to voting in the Committee of the Whole, clause 6 of rule XVIII, pertains to quorum and voting in the Committee of the Whole. Clause 6(b)(2) limits a point of order that a quorum is not present to a specific circumstance:

After a quorum has once been established on a day, the Chairman may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute rule and the Chairman has put the pending proposition to a vote.

Clause 6(b)(3) of rule XVIII then provides in relation to subparagraph (2):

Upon sustaining a point of order that a quorum is not present, the Chairman may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be five minutes.

Clause 6 of rule XVIII states that the chairman of the Committee of the Whole shall order a recorded vote on a request supported by at least 25 Members.

Clause 6(f) of rule XVIII allows the chairman of the Committee of the Whole to reduce the minimum time for voting to five minutes:

In the Committee of the Whole House on the state of the Union, the Chairman may reduce to five minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

The chairman of the Committee of the Whole may also postpone a request for a recorded vote on an amendment under Clause 6(g) of rule XVIII:

The Chairman may postpone a request for a recorded vote on any amendment. The Chairman may resume proceedings on a postponed request at any time. The Chairman may reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of question shall be 15 minutes.

Clause 3 of rule III grants to each Delegate and the Resident Commissioner “the same powers and privileges as Members of the House” in the Committee of the Whole. Where the votes cast by the Delegates and Resident Commissioner are “decisive” in the recorded vote on a question in the Committee of the Whole, clause 6(h) of rule XVIII requires a re-vote:

Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commission have been decisive, the Committee of the Whole shall rise and the Speaker shall put such question de novo without intervening motion. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.

The Select Committee has not yet determined the relevance or importance, if any, of the above rules or any other House rules to the inquiry and duties of the Select Committee. However, the Select Committee believes this initial list may serve useful in moving forward with our assignment.