HON. RON PAUL OF TEXAS IN THE SENATE JUDICIARY COMMITTEE September 9, 2003

Statement Opposing the Continuity of Government Proposal

Mr. Chairman, thank you for holding this hearing and for providing me the opportunity to present comments on the important issue of how to maintain continuity of government if a majority of members of the House of Representatives are incapacitated. This issue has recently attracted attention because of the proposal of the “Continuity of Government (COG) Commission,” that the Constitution be amended to allow appointed persons to fill vacancies in the House in the event of an emergency.

Since the COG Commission proposal was introduced I, along with other members of Congress, journalists, academics, and policy experts have expressed concerns that having appointed members serve in Congress function is inconsistent with the House’s historic function as the branch of Congress most directly accountable to the people. A superior way to address concerns regarding continuity of House operations in the event of an emergency is contained in HR 2844, the Continuity of Representation Act, introduced by my distinguished colleague, House Judiciary Chairman James Sensenbrenner.

Even with the direct election of Senators, the fact that members of the House are elected every two years while Senators run for statewide office every six years, means that members of the House of Representatives are still more accountable to the people than any other part of the federal government. Appointed members of Congress simply cannot be truly representative. Turning once again to Federalist 52, we find this point eloquently made by Mssrs. Madison and Hamilton: “As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.”

Mr. Chairman, there are those who say that the power of appointment is necessary in order to preserve checks and balances and thus prevent an abuse of executive power. Of course, I agree that it is very important to carefully guard our constitutional liberties in times of crisis, and that an over-centralization of power in the executive branch is one of the most serious dangers

to that liberty. However, Mr. Chairman, during a time of crisis it is all the more important to have representatives accountable to the people making the laws. Otherwise, the citizenry has no check on the inevitable tendency of government to infringe on the people's liberties at such a time. I would remind my colleagues that the only reason we are re-examining provisions of the PATRIOT Act is because of public concerns that this Act gives up excessive liberty for a phantom security. Appointed officials would not be as responsive to public concerns.

Supporters of this plan claim that the appointment power will be necessary in the event of an emergency and that the appointed representatives will only be temporary. However, the laws passed by these "temporary" representatives will be permanent.

Mr. Chairman, this country has faced the possibility of threats to the continuity of this body several times throughout our history, yet no one suggested removing the people's right to vote for members of Congress. For example, the British in the War of 1812 attacked the city of Washington, yet nobody suggested the states could not address the lack of a quorum in the House of Representatives though elections. During the Civil War, the neighboring state of Virginia (where today many Capitol Hill staffers and members reside) was actively involved in hostilities against the United States government. Yet Abraham Lincoln never suggested that non-elected persons serve in the House.

The Constitution already provides the framework for Congress to function after a catastrophic event. Article I section 2 grants the governors of the various states authority to hold special elections to fill vacancies in the House of Representatives. Article I section 4 gives Congress the authority to designate the time, manner, and place of such special elections if states should fail to act expeditiously following a national emergency. As Hamilton explains in Federalist 59, the "time, place, and manner" clause was specifically designed to address the kind of extraordinary circumstances imagined by COGC. Hamilton characterized authority over federal elections as shared between the states and Congress, with neither being able to control the process entirely.

Chairman Sensenbrenner's bill exercises Congress' power to regulate the time, place, and manner of elections by requiring the holding of special elections within 21 days after the Speaker or acting Speaker declares a majority of House members are incapacitated. This proposal protects the people's right to choose their representatives at the time when such a right may be most important, while ensuring continuity of the legislative branch.

I have no doubt that the people of the states are quite competent to hold elections in a timely fashion. After all, it is in each state's interest to ensure it has adequate elected representation in Washington as soon as possible. The re-call election in California shows it is possible to have a gubernatorial election, in the most populous state in the union no less, in less than three months time. Surely it is possible to hold an election in a congressional district in under that amount of time.

In conclusion, I once again thank the Chairman of this Committee for allowing me to express my views before the House. I also once again urge my colleagues to reject any proposal that takes away the people’s right to elect their representatives and instead support HR 2844, the Continuity of Congress Act, which ensures an elected Congress can continue to operate in the event of an emergency. This is what the drafters of the Constitution intended.