

June 24, 2021

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232, United States Capitol
Washington, DC 20515

Dear Speaker Pelosi:

The undersigned organizations share your disappointment that the Senate has so far been unable to secure the votes necessary to break a filibuster on legislation to establish an independent national commission to investigate the January 6, 2021 attack of the U.S. Capitol Complex. We also applaud your personal leadership on that legislation, as well as your continued commitment to ensuring that the events of January 6 are thoroughly investigated to prevent their recurrence.

We continue to support the creation of an independent national commission as the most appropriate response. If the Senate will pass legislation to create a commission capable of conducting a complete investigation, that is the best option. But we also support your announcement today that the House will proceed with the creation of a select committee to investigate January 6. Indeed, under the right circumstances a select committee can offer many of the same benefits. As organizations with deep experience and expertise in congressional capacity, congressional oversight, and government accountability, we outline below several of the key features that will maximize the effectiveness of any future inquiry.

First, we encourage you to ensure that any House inquiry into January 6th has financial and staffing capacities commensurate with the investigation's necessary scope. As the *New York Times* recently reported, despite employing experienced investigators, a chief impediment to the Senate's recent joint oversight work on January 6 was its severely limited staffing.¹ We also observe that staffing on other recent investigative efforts has totaled roughly half the size of their predecessors, such the House Select Committee on Iran-Contra. Both Iran-Contra and the 9/11 Commission were necessarily powered by more than 80 professional staff. Especially in light of the wide-ranging and complex issues implicated in the January 6 insurrection, capacity needs will be similar.

Second, those wide-ranging issues also suggest a need for a diversity in staff make-up. In addition to investigative counsel, an effective staff would include professionals with deep

¹ Alan Feuer & Nicholas Fandos, *Why the Capitol Riot Inquiries Leave Room for a Broader Commission*, New York Times (May 25, 2021), <https://www.nytimes.com/2021/05/25/us/politics/capitol-riot-investigations.html>.

expertise in areas spanning disinformation, cybersecurity, dark financial flows, malign foreign influence operations, law enforcement, civil rights and civil liberties, and other fields likely relevant to a comprehensive examination of the events and causes of the January 6 attack. The House might also consider beneficial arrangements to complement full-time staff, such as making use of detailees (such as from the Government Accountability Office) and fellowship programs now common in the House, in order to recruit diverse talent.²

Third, we recognize that any investigation in the House, whether by standing committees or a select committee, risks involvement by individuals who appear dedicated to undermining the investigation. Indeed, many members of the House voted to overturn the election results and/or are engaged in active disinformation efforts about the events of January 6—including during recent public hearings. In the event of a select committee in particular, we urge you to consider ways to mitigate the risks of unconstructive membership.

The Speaker's sole authority to appoint a select committee's members³ dates to 1880.⁴ (By custom, the Minority Leader also proposes recommended appointments.) We support using this sole authority in a manner that balances the value (and availability) of bipartisan participation and the fact that the Minority Leader is among those who voted to overturn the election and reportedly undermined productive bipartisan efforts to form an independent commission after initially supporting those negotiations. Specifically, we support reserving the authority to exclude Members who are committed to undermining the investigation.⁵ One option the House could consider is establishing a select committee of limited membership—perhaps two or four members though with otherwise expansive resources. The dynamics of a two- or four-Member investigation may be less fraught than those typical of large investigative bodies. We also suggest adopting procedures for longer, more in-depth questioning at hearings, including by professional staff, instead of the traditional five-minute limits.

Fourth, creative solutions could help to ensure that a House inquiry enjoys robust credibility with the public. For example, the House or relevant committee could empanel an external advisory body—seated with individuals who may have otherwise served on a January 6 commission. The House frequently convenes experts to advise its policymaking and oversight work, and enjoys expansive authority to do so.⁶ A resolution establishing a select committee, for instance, could

² E.g., Techcongress, <https://www.techcongress.io/> (last visited June 23, 2021).

³ Rules of the House of Representatives, House Rule I, cl. 11, 117th Cong. (2021).

⁴ Michael L. Koempel, Congressional Research Service, R40233, House Ad Hoc Select Committees with Legislative Authority: An Analysis (2009), https://www.everycrsreport.com/files/20090413_R40233_9500f341d6ecc21987efadcb86283d4234f0a02b.pdf.

⁵ Under House Rule I, membership of a select committee should include the principal proponents of the underling bill. House Rule I, cl. 11.

⁶ Under their general authority, committees of either chamber may assemble advisory entities in order to procure their temporary services, pursuant to 2 U.S.C. §4301. In the House, individual members may likewise do so, in accordance with ethics rules. (See, *Member Advisory Groups*, Committee on Ethics, U.S. House of Representatives, <https://ethics.house.gov/official-outside-organizations/member-advisory-groups> (last visited June 23, 2021).) The

concomitantly authorize an advisory panel and stipulate its parameters, including specifying qualifications for appointments akin to those developed for the January 6 Commission. Internally, advisory group members would furnish advice and avail the committee and its staff of their expertise. Externally, the empaneling of prominent and trusted national figures could add credibility and generate public trust.

Finally, a successful inquiry will be predicated on investigators' abilities to obtain information from entities and individuals who are not inclined to provide it voluntarily. Any committee tasked with the investigation should be well-equipped to enforce compliance with its subpoenas. At minimum, any resolution authorizing the investigation should clear procedural hurdles to bringing litigation to enforce subpoenas. We also encourage authorizing the investigation to retain outside litigation counsel.

But because civil litigation to enforce subpoenas may nevertheless expend years in court, the House should consider whether the urgency of this investigation and the fact that Congress itself was the target of the attack justify reviving its two other constitutionally-grounded enforcement tools to more speedily and concretely compel compliance. Namely, the House could update methods of enforcement for its inherent contempt power, such as establishing a schedule of monetary penalties for contemnors—including, specifically, senior executive branch officials—in place of the historical method of deploying the sergeant-at-arms. Existing language, such as in H.Res. 1029,⁷ could be incorporated into an authorizing resolution for a select committee. Second, particularly for private entities that obstruct the House's work, a committee should consider certifying contempt citations to the Justice Department for referral to a grand jury, in accordance with criminal contempt statutes.⁸

These are steps the House has understandably been hesitant to take; but the degraded state of executive branch compliance with congressional oversight and the unique interests the Congress has in an effective investigation and proposals for reform may justify revival of these dormant but unquestionably legitimate means of securing compliance. Absent establishing concrete incentives and credible consequences, an inquiry risks significantly impairing its effectiveness to access critical information.

The above recommendations are in service of a complete chronicling of January 6 and its causes, which we believe are essential to preventing similar attacks in future. We are confident that a House inquiry, properly equipped, can make essential progress towards the fact-finding and truth-telling necessary to strengthen our democratic institutions. While we wholeheartedly

House also enjoys great flexibility to determine how external experts may service the needs of the chamber as a whole: there is no limiting statute or House rules.

⁷ Congressional Inherent Contempt Resolution, H.R. Res. 1029, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-resolution/1029/text>.

⁸ 2 U.S.C. § 192, 194.

support the establishment of a national commission with the stature, expertise, resources, and time to meet that imperative, we hope the House will step into the breach in a way that achieves many of the virtues a national commission would have provided.

Thank you for your continued commitment to accountability and reform.

Sincerely,

American Oversight

Protect Democracy

Common Cause

Open The Government

Public Citizen

Citizens for Responsibility and Ethics in Washington (CREW)

Project On Government Oversight (POGO)