

*****TESTIMONY*****

Embarking on the Journey to an E-Congress

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The application of new technology is often a conflict between what is possible and what is desirable. Just because something can be done technologically does not mean it should be done. The "Law of the instrument" (often paraphrased as "give a child a hammer, and the whole world becomes a nail.") creates tremendous pressure to apply new technologies simply because they exist. The "Law of the least appropriate target (paraphrased as "give a child a hammer and he will hit the glass vase rather than the nail") suggests the common tendency to apply new technologies to the wrong situations.

Prudent proponents of technological change need to recognize that the best applications of new technologies are demand driven. They must meet an evident need rather than simply represent the application of a new tool. The events of September 11th raise a real question as to whether the geographic concentration of the nation's top legislative leadership represents a real danger to the functioning of government and suggests considering ways to neutralize that danger and provide a contingency plan should face-to-face deliberation be impossible.

A key characteristic of existing and emerging technologies is their ability to supercede geography. The telegraph, telephone, television, and fax machine all in their day provided similar advantages for particular formats. The advantage of the Internet is that it provides the potential for transmitting information in a variety of formats (audio, video, textual) simultaneously and with the potential for interactivity.

A. Should Congress Take Advantage of Geography Superceding Technologies For Its Most Basic Collective Functions?

The initial question is not one of technology, but one of philosophy and politics. Before exploring particular technologies we must face up to the question: "Should Congress be allowed to meet remotely?" If we assume the worst case scenario that Congress can not meet face-to-face anywhere, the question revolves around the consideration of what absolutely necessary functions of government must be maintained and can they be provided without congressional input? Clearly specific constitutional requirements and the desire for checks and balances suggest the danger of operating for significant periods of time without a functioning Congress.

If Congress is indispensable, even for a short time, then an alternative must be found. It is assumed that any movement toward an e-Congress would be a temporary solution to handle a very limited set of functions such as passing a budget, declaring war, or passing legislation to ameliorate the situation which brought on the crisis. If that question of whether we should consider an e-Congress is answered with at least a tentative "possibly," the following considerations should guide the final decision and the potential real technological applications.

B. Some Concerns About an E-Congress

We will begin with the assumption that basic access and security issues can be satisfactorily solved to assure that all Members have the equipment and technological skill to participate and the validity of the legitimate participants can be assured.

(1) Who is allowed to participate?

-Individual Members: Not every Member of Congress participates in every committee meeting in which they are a legitimate member or in every floor debate. When Congress and its committees meet in their traditional ways, it is the individual Member who chooses whether to participate or not (and who must justify their decision to others). A danger of virtual meetings lies in the fact that accessibility to the necessary technology, equipment malfunctions, and user skills (or lack thereof) could deny some Members the right to participate even if they wished to. The danger expands in a terrorism scenario when the technology is likely to be disrupted. No technology will work 100% even under the best of conditions. For on-line deliberation, procedures would have to be determined for allowing Members to insert comments which technology malfunctions blocked. Much of this could be handled by minor changes in the "revise and extend" rules. More difficult would be how to handle the assertion "that if only I had been able to make my point the result would be different." It is impossible to "unring the bell" (or more precisely insert the ringing bell in a completed sequence.) Redundancy should in all but the most dire situations (a complete disruption of all telecommunications) provide enough alternative ways to assure participation.

A related question is when an e-Congress would meet. While the technology would allow (and perhaps even encourage) a 7/24/365 continuous meeting schedule, personal convenience and the need for time to reflect suggests clear decision rules on meeting times. The concern is exacerbated by the fact that the events that would lead to an e-Congress would be so disturbing that there would be pressure for immediate action. There is a danger that the choice of meetings times would be used even more strategically than today to deal in or deal out certain types of members (based on time zones or conflicting committee meeting schedules). Using the technology to ease the pressure of time by keeping the voting terminals (or the opportunity to enter the debate) open raises another set of questions about pressuring Members to change votes or to "correct" statements.

For voting remotely, the technology would need to provide immediate user feedback on if and how their vote was recorded. Redundancy of input would not be enough. The importance of the vote in congressional procedures is so great that absolute verification would be a minimum requirement. It is a realistic assumption that the system would not work 100% of the time. An acceptable decision rule would have to be established for defining legitimate victory margins for votes and the time allowed to challenge a vote. It makes sense that if the winning margin is less than the number of Members claiming technological difficulties or without access, the vote would have to be redone. This raises the issue of strategically withholding votes (and claiming technological difficulties) and the potential for drawn out wrangles over the legitimacy of decisions. It would also be necessary to formulate rules about changing votes since the current 15 minute rules for vote duration (in the House) would probably not apply to remote voting.

-Collectives of Members: It is only individual Members who participate in the deliberation process. Remote deliberation would require the capability of party and special interest caucuses within Congress to meet and in some cases cast formal votes. Party leaders are dependent on "back

channel" communications with colleagues before and during votes.

The power of persuasion is typically dependent on proximity and the ability to transmit decision-driving information. To the degree that party and interest group leaders lose proximity and the ability to transmit information, they become irrelevant in the congressional process. The technology would have to allow for secure back channel communications between individual Members and between leaders and groups of followers.

-Staff: Currently Members of Congress depend heavily on their staffs for information and guidance. An e-Congress would need to develop capabilities for staff input, especially if a Member and his or her staff are physically separated. A secure system for Member input would have to be matched with a secure system for staff to Member (and Member to staff) communications. Sending Members off to secure locations cut off from their staff would do little to improve decision-making.

-The Public: Current congressional procedures allow input from a variety of individuals and groups in the form of direct communications with Members and formal testimony. Remote deliberation technology should not isolate Members from such input, nor skew the composition of those with the capability to participate.

Existing technologies invite two alternative images. At one extreme we could guarantee security and efficiency at the cost of public input. At the other extreme we could guarantee responsiveness at the cost of limited security and reduced efficiency.

On the one hand we can imagine fearful Members in their secure electronic voting bunker guiding the nation's future. The image of the Member hunkering down with their remote terminal ready to make key voting decisions while isolated from constituents and organized interest groups may at times sound appealing, but would vitiate Congress role as a representative institution. Such a scenario would encourage individualism and members acting at best as "trustees" for constituents, looking out for their presumed interests, but isolated from their input. Even in times of crisis, the public has a right to participate.

At the other extreme the technology could be used to dispatch Members out into the field to collect and transmit public desires faster and more accurately than when they are filtered by staff and tempered by the passage of time. The image of five hundred and thirty-five "electronic voting booths", each manned by an elected official on a "field telephone" would lead to increased localism and an extreme case of the Member serving as a "tribune," simply recording the public mood and passing it on. Security, efficiency and protection from irresponsible policy would be continuing problems in such a scenario.

While the technology could support either of the extremes, the legacy of two-hundred years with the existing Congress has been its ability to find a balance between the two extremes, allowing public input, but tempering it with judgment. An e-Congress would have to find a way to maintain that balance.

Any scenario allowing some public input, must also guarantee the breadth of public input. To the degree that electronic communications become the coin of the realm in an e-Congress, more options for subsidized options for public input and more sophisticated ways of evaluating such input will be necessary.

(2) Some Concerns About Deliberation Content

It is assumed that the operation of an e-Congress would involve, at a minimum, an interactive chat room (or bulletin board) equivalent of floor debate, managed largely in the same way as current debate by floor leaders. Who would allocate the order of "speaking" and perhaps the length of comments? If the technology were to involve a real-time chat room or video-conferencing, the debate would look much more like current floor debate since only one person could speak at a time and some semblance of argument order would be retained. A bulletin board approach would increase flexibility, but its "threads" would be less coherent and arguments much more easily lost.

Another concern is that it is widely assumed and supported by research that face-to-face communications tend to be more temperate than that which occurs on-line. People say things in e-mails they would never say to someone personally. With the concerns over comity and collegiality in Congress, an e-Congress could exacerbate conflict. New applications of formal rules and new informal norms of behavior would probably be necessary.

(3) How will Official Records be Accessed and Maintained? Collecting, editing and archiving the records of an e-Congress would be a challenge, depending on the technology in use. The existing technologies allow audio, video and text. It is unclear how these would be stored to provide an accurate, integrated record of what went on in the deliberation process. The courts have ruled that legislative intent derives from the written Congressional Record, which is an intentionally edited version reality reflecting what Members wished they had said. An e-Congress could encourage the retention of a more robust record including material in a variety of formats. While such a record would give a better feel for the decision input, the challenge of maintaining such records (and the equipment necessary to access them) will increase the cost and complexity of archiving.

A related question is who will have access and under what time schedule? Real time access to digitized records would empower technologically sophisticated citizens (and collectives of citizens in interest groups), but could increase the gap between citizens in the know and citizens in the dark about congressional activity. Since congressional records go through a variety of transfigurations (drafts, amended proposals, "revisions and extensions" of remarks, etc.), the record at any one point in time is a snapshot of a moving picture. In an e-Congress with public access materials, the definition of "the" official record would have to be carefully defined and explicated.

(4) Determining the Technology

If a plan is developed for an e-Congress, it is important not to tie legislation, proposed rules, or contingency plans to a particular technology. What we call the Internet today will in ten years seem as outdated as 8-track tapes and video disks. We don't know what the next wave of technology will be called or what its capabilities will be. The rationale for proposed applications should be based on functionalities not existing tools. The designers of applications would have to ask, What types of information would need to be transmitted (is audio alone enough? What about video and text?) What are the minimum requirements to allow Congress to perform its most important functions?

C. The E-Congress Journey

None of the above are "killer" concerns making an e-Congress impossible or undesirable to

implement. They simply raise questions that need to be faced. Technologies do not impact on social institutions like two rudderless ships colliding at night. Applications are filtered through the traditions and procedures of the existing institutions and can be steered by careful planning. The exciting part of this hearing lies in strengthening Congress' rudder for guiding it through the exciting, but dangerous shoals of designing a viable alternative for dangerous times. If Congress is going to launch itself on the journey toward an e-Congress, it is wise to consider what it is likely to encounter along the way.

*****Notes for Frantzich testimony*****

1. Professor Frantzich wrote the first book about Congress's use of new technology (COMPUTERS IN CONGRESS: THE POLITICS OF INFORMATION, 1979) as well as numerous other more recent books, articles, and reports for Congress and various think tanks on the impact of technology on political institutions. This semester he is serving as a senior Fulbright Scholar in the Czech Republic. He can be contacted at frantzic@usna.edu

2. The debate over whether a remote meeting would meet the constitutional requirement of Congress "convening" are reminiscent of the debates a decade ago over whether the electronic versions of congressional outputs were really "documents." Today it is hard to believe the intensity of the battle and that participants could not (or would not) readily agree that it was content, not format that defined congressional outputs as documents. The idea of "convening" at its heart implies joining together to take action. That function does not require physical proximity.