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One Hundred Eighteenth
Congress of the United States
House of Representatives

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December 8, 2023

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G St. N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to request that the Government Accountability Office (“GAO”) conduct a study cooperatively with all States that choose to participate of the capability of the States to comply with the existing federal law¹ requirements for filling expeditiously any vacancies in a state’s representation in the United States House of Representatives (“House”) following a mass casualty event. In light of a worrisome increase in the number of serious, credible threats against members of Congress,² we want to ensure that the States are appropriately positioned to act to ensure continuity of government and operations in the event of the unthinkable.

The Constitution requires all House vacancies to be filled via special election and entrusts each state’s governor with the responsibility of issuing a writ of election.³ This stands in stark contrast with Senate vacancies, where the Constitution allows each state’s legislature to empower their governor to make interim appointments.⁴ Following the terrorist attacks on September 11, 2001, federal law was amended to respond in the event of an extraordinary circumstance and may be able to compel states to hold a special election on an expedited timeframe. Should the statute operate, if the Speaker of the House of Representatives announces that the House has suffered more than 100 vacancies, each state with a vacancy would be required to hold a special election within 49 days.⁵

Some states, like Georgia, have enacted state law to mirror the federal statutory language, perhaps suggesting a pathway to ensure readiness.⁶ Yet, 22 years after that attack, it remains unknown if other states are prepared to respond in the event that threatens the continuity of the federal government. Specific instances of crises that could

¹ 2 U.S.C. § 8

² Dick Uliano, *Threats against members of Congress up 400%, US Capitol police chief says*, WTOPnews (May 17, 2023), <https://wtop.com/congress/2023/05/u-s-capitol-police-facing-more-threats-while-understaffed/#.>; Michael Kaplan, Kathryn Watson, *Capitol Police investigated about 7,500 cases of potential threats against lawmakers in 2022*, CBS News (Jan. 17, 2023), [https://www.cbsnews.com/news/threats-congress-2022/.](https://www.cbsnews.com/news/threats-congress-2022/); Andrew Solender, *Capitol Police data indicates threats to lawmakers have surged since 2017*, Axios (June 21, 2022), <https://www.axios.com/2022/06/22/capitol-police-threats-congress.>

³ U.S. Const. art. I, § 2, cl. 4. A writ of election is an order calling for an election.

⁴ U.S. Const. amend. XVII.

⁵ 2 U.S.C. § 8(b)(2). There is some debate about the operative status of this statute, yet it remains on the books today.

⁶ Ga. Code § 21-2-543.1.

impact Congress' ability to carry out its duties could include a mass casualty event aimed at all or most Members simultaneously such as at the State of the Union or a caucus retreat; a more narrowly targeted attack where enough Members of one party are killed to change the majority composition of the House; or finally, an accident where full states or regions' Members die in an accident, effectively stripping them of representation in Congress at least for some time. As such, GAO working with States on a voluntary basis to study whether they are prepared to meet the current federal statutory language is of key importance.

This is an issue that each of us believes deserves serious attention. During a markup of H.R. 4563, the American Confidence in Elections Act, the Committee on House Administration unanimously approved a bipartisan amendment directing GAO to study this issue.⁷ Moreover, in the 117th Congress, the Select Committee on the Modernization of Congress held a related hearing entitled, "Congressional Continuity: Ensuring the First Branch is Prepared in Times of Crisis."⁸ In preparation for that hearing, several Secretaries of State responsible for the administration of special elections in their states raised concerns about their ability to comply with the required timelines.

GAO's cooperative study of the practicality of holding special elections within the statutory timeframe will further inform Congress's work to prepare for the continuity of government and operations during an emergency.

For questions or additional information, please contact Caleb Hays, majority General Counsel and Deputy Staff Director, at Caleb.Hays@mail.house.gov, or Heather Painter, Representative Kilmer's Legislative Director, at Heather.Painter@mail.house.gov.

Sincerely,



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⁷ *Full Committee Markup of H.R. 4563, American Confidence in Elections Act: Markup Before the H. Comm. On Admin., 118th Cong. (2023).*

⁸ *Congressional Continuity: Ensuring the First Branch is Prepared in Times of Crisis: Hearing Before the H. Select Comm. on the Modernization of Congress, 117th Cong. (2022).* The Committee on House Administration's Subcommittee on Modernization is the successor the Select Committee on the Modernization of Congress.



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BGS/ad