

Comparison of (Similar) Republican and Democratic Draft Legislation on Jan. 6 Commission

by Margaret Shields and Heather Szilagyi

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On Monday, Speaker Nancy Pelosi [announced](#) the decision “to establish an outside, independent 9/11-type Commission” to investigate the events of Jan. 6, 2021. According to [Politico](#), “Democrats could release legislation creating that commission as soon as this week.” In the meantime, it is worth considering that members of Congress have already introduced two bills in the House of Representatives that would create such a commission.

Both bills draw heavily on the text of [legislation](#) that established the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) established in 2002. Rep. Rodney Davis (R-IL) introduced [H.R. 275](#) on Jan. 12, and Rep. Eleanor Holmes Norton (D-DC) introduced [H.R. 410](#) on Jan. 21. Neither bill currently has cosponsors of the opposite political party. The former currently has 28 cosponsors; the latter has 11. Remarkably, half of the Republican cosponsors of H.R. 275 [voted against certifying election results](#) on Jan. 6, 2021.

Both bills would establish a bipartisan commission with a broad mandate to inquire into the circumstances and causes of the attack, official responses, and government preparedness. Both bills give the Commission power to hear testimony, collect evidence, and subpoena witnesses and documents. Also similar to the 9/11 Commission, the bills provide for a final report detailing the findings, conclusions, and recommendations for corrective measures that have been agreed to by a majority of the Commission. Both require the final report to be submitted to Congress and the President 18 months after enactment of the legislation.

The bills also differ in key respects. Both bills provide the view of Congress on the experiences and professional backgrounds that appointees to the Commission should possess. While H.R. 410 includes a depth of experience in racial justice as a valuable qualification, H.R. 275 does not. In contrast, H.R. 275 includes expertise in online disinformation, but H.R. 410 does not. H.R. 410 also includes a more detailed list of facts and circumstances that may be relevant to the investigation, including the “impact, if any, of the race of the attackers on the response of law enforcement,” and “the flow of assets to insurrectionist and domestic terrorist organizations.” The language used to describe the attack also differs, with H.R. 275 calling the events a “domestic terrorist attack” and H.R. 410 using the phrase “insurrectionist attack.” H.R. 275, unlike H.R. 410, would also allow up to two Members of Congress or other officers or employees of the federal government to serve on the Commission.

The chart below details the major provisions of both 1/6 Commission bills and the 9/11 Commission legislation. Key differences are in **bold**.

9/11 Commission Legislation	H.R. 275 Proposed 1/6 Commission Introduced January 12, 2021	H.R. 410 Proposed 1/6 Commission Introduced January 21, 2021
<p>“There is established in the legislative branch the National Commission on Terrorist Attacks Upon the United States”</p>	<p>“There is established in the legislative branch the National Commission on the Domestic Terrorist Attack Upon the United States Capitol”</p>	<p>“There is established in the legislative branch the National Commission on the Insurrectionist Attack Upon the United States Capitol”</p>
<p>Commission member appointment 10 members, with Chair appointed by President and Vice-Chair appointed by Senate Democratic leader, in consultation with House of Representatives Democratic leader</p> <p>Equal appointments by Democratic and Republican Members of Congress:</p> <ul style="list-style-type: none"> ● 2 members appointed by the senior member of House Republican leadership ● 2 members appointed by the senior member of Senate Republican leadership ● 2 members appointed by the senior member of Senate Democratic leadership ● 2 members appointed by the senior member of House Democratic leadership <p>No more than 5 members may be from the same political party.</p>	<p>Commission member appointment 10 members, with Chair appointed by President and Vice-Chair appointed by Senate Republican leader, in consultation with House of Representatives Republican leader</p> <p>Equal appointments by Democratic and Republican Members of Congress:</p> <ul style="list-style-type: none"> ● 2 members appointed by the senior member of House Republican leadership ● 2 members appointed by the senior member of Senate Republican leadership ● 2 members appointed by the senior member of Senate Democratic leadership ● 2 members appointed by the senior member of House Democratic leadership <p>No more than 5 members may be from the same political party.</p>	<p>Commission member appointment 10 members, with Chair appointed by President and Vice-Chair appointed by Senate Republican leader, in consultation with House of Representatives Republican leader</p> <p>Equal appointments by Democratic and Republican Members of Congress:</p> <ul style="list-style-type: none"> ● 2 members appointed by the senior member of House Republican leadership ● 2 members appointed by the senior member of Senate Republican leadership ● 2 members appointed by the senior member of Senate Democratic leadership ● 2 members appointed by the senior member of House Democratic leadership <p>No more than 5 members may be from the same political party.</p>

<p>“An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.”</p>	<p>“An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government, except that not more than two of the members who are appointed by Members of Congress may be Members of Congress or other officers or employees of the Federal Government.”</p> <ul style="list-style-type: none"> ● “Members of the Commission who are full-time officers or employees of the United States, including Members of Congress, may not receive additional pay, allowances, or benefits by reason of their service on the Commission.” 	<p>“An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.”</p>
<p><u>Additional qualifications</u> “It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs.”</p>	<p><u>Additional qualifications</u> “It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, online dis-information and intelligence gathering.”</p>	<p><u>Additional qualifications</u> “It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, and racial justice.”</p>
	<p><i>[Note: some of the same information is contained in both 1/6 Commission bills but is distributed differently between the Purpose and Functions sections. This analysis includes language from both sections for clarity.]</i></p>	<p><i>[Note: some of the same information is contained in both 1/6 Commission bills but is distributed differently between the Purpose and Functions sections. This analysis includes language from both sections for clarity.]</i></p>

Purpose/ Function

The Commission had authority to “examine and report upon the facts and causes . . . ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks . . . make a full and complete accounting of the circumstances . . . preparedness . . . response . . . [and] identify, review, and evaluate the causes of and the lessons learned . . .”

The Commission would report to “the President and Congress . . .”

The investigation “**may include: intelligence agencies; law enforcement agencies; diplomacy; immigration, nonimmigrant visas, and border control; the flow of assets to terrorist organizations; commercial aviation; the role of congressional oversight and resource allocation; and other areas of the public and private sectors . . .**” *[Note: this is similar to the list provided in H.R. 410, with differences informed by the nature of the attack.]*

Directs the Commission to “**build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations**” of the Joint Inquiry of the Select Committee on Intelligence of the Senate, the Permanent Select Committee on

Purpose/Function

The Commission will “examine and report upon the facts and causes . . . ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks . . . make a full and complete accounting of the circumstances . . . preparedness . . . response . . . [and] identify, review, and evaluate the causes of and the lessons learned . . .”

The Commission will report to the “**Chair and ranking minority member of the Committee on House Administration, the Chair and ranking minority member of the Committee on Rules and Administration of the Senate, the President, and Congress.**”

The Bill provides the Commission will “**make interim reports on an ongoing basis on the Commission’s analysis of the security and safety of the Capitol Complex . . .**” *[Note: both bills provide for optional interim reports, this bill specifies that the reports should be on the security and safety of the Capitol and are required on an ongoing basis.]*

Purpose/Function

The Commission will “investigate[] relevant facts and circumstances . . . ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks . . . make a full and complete accounting of the circumstances . . . preparedness . . . response . . . [and] identify, review, and evaluate the causes of and the lessons learned . . .”

The Commission will report to “the President and Congress . . .”

The Bill contains an additional provision determining that scope of the inquiry should build upon the investigation at other entities, “**which may include: relevant facts and circumstances relating to— intelligence agencies; law enforcement agencies, including the impact, if any, of the race of the attackers on the response of law enforcement; the flow of assets to insurrectionist and domestic terrorist organizations; the role of congressional oversight and resource allocation; and other areas of the public and private sectors determined relevant by the Commission for its inquiry.**” *[Note: this is similar to the list provided in the 9/11 Commission legislation, with differences informed by the nature of the attack.]*

<p>Intelligence of the House of Representatives and “other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally. [Note: this is similar to language in H.R. 410]</p> <p>Further, the Commission should review findings of the intelligence community and the Joint Inquiry, and then determine areas where the Joint Inquiry had either not investigated or not completed investigation, or where new information had become available.</p>		<p>Directs the Commission to “build[] upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of prior executive branch, congressional, or independent commission investigations into the insurrectionist attack of January 6, 2021, other insurrectionist and domestic terrorist attacks, and domestic terrorism generally.”</p> <p><i>[Note: this is similar to language in the 9/11 Commission legislation]</i></p>
<p><u>Powers</u> The Commission (or any subcommittee or member acting on the authority of the Commission) may “hold such hearings . . . take such testimony . . . receive such evidence. . . administer such oaths; and . . . require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such . . . records . . . as the Commission or such designated subcommittee or designated member may determine advisable.”</p> <p><u>Subpoena Powers</u> Subpoena requires agreement of Chair and Vice-Chair (who are appointed by President and Senate Democratic leader, respectively) or affirmative vote of 6 members of Commission</p>	<p><u>Powers</u> The Commission (or any subcommittee or member acting on the authority of the Commission) may “hold such hearings . . . take such testimony . . . receive such evidence. . . administer such oaths; and . . . require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such . . . records . . . as the Commission or such designated subcommittee or designated member may determine advisable.”</p> <p><u>Subpoena Powers</u> Subpoena requires agreement of Chair and Vice-Chair (who are appointed by President and Senate Republican leader, respectively) or affirmative vote of 6 members of Commission</p>	<p><u>Powers</u> The Commission (or any subcommittee or member acting on the authority of the Commission) may “hold such hearings . . . take such testimony . . . receive such evidence. . . administer such oaths; and . . . require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such . . . records . . . as the Commission or such designated subcommittee or designated member may determine advisable.”</p> <p><u>Subpoena Powers</u> Subpoena requires agreement of Chair and Vice-Chair (who are appointed by President and Senate Republican leader, respectively) or affirmative vote of 6 members of Commission</p>

<p>In case of contumacy or failure to obey a subpoena, “the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.”</p> <p>“In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action”</p>	<p>In case of contumacy or failure to obey a subpoena, “the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.”</p> <p>“In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action”</p>	<p>In case of contumacy or failure to obey a subpoena, “the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.”</p> <p>“In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action”</p>
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