

candidates, the Chair will interrupt the Member and admonish the Member if he is not in comportment with the rules.

MAKING IN ORDER AMENDMENT IN LIEU OF AMENDMENT 3 PRINTED IN HOUSE REPORT 108-466 DURING CONSIDERATION OF H.R. 2844, CONTINUITY IN REPRESENTATION ACT OF 2004

Mr. HASTINGS of Washington. Mr. Speaker I ask unanimous consent that during consideration of H.R. 2844, pursuant to House Resolution 602, the committee amendment in the nature of a substitute recommended by the Committee on the Judiciary be considered as the original bill for the purpose of amendment, and the amendment I have placed at the desk be in order in lieu of the amendment printed in part B of House Report 108-466 and numbered 3.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

An amendment offered in lieu of amendment No. 3 printed in House Report No. 108-466 offered by Mr. SKELTON of Missouri: In section 26(b) of the Revised Statutes of the United States, as proposed to be added by the bill, add at the end the following new paragraph:

“(5) PROTECTING ABILITY OF ABSENT MILITARY AND OVERSEAS VOTERS TO PARTICIPATE IN SPECIAL ELECTIONS.—

“(A) DEADLINE FOR TRANSMITTAL OF ABSENTEE BALLOTS.—In conducting a special election held under this subsection to fill a vacancy in its representation, the State shall ensure to the greatest extent practicable (including through the use of electronic means) that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act) not later than 15 days after the Speaker of the House of Representatives announces that the vacancy exists.

“(B) PERIOD FOR BALLOT TRANSIT TIME.—Notwithstanding the deadlines referred to in paragraphs (2) and (3), in the case of an individual who is an absent uniformed services voter or an overseas voter (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act), a State shall accept and process any otherwise valid ballot or other election material from the voter so long as the ballot or other material is received by the appropriate State election official not later than 45 days after the State transmits the ballot or other material to the voter.”

Mr. HASTINGS of Washington (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Washington?

There was no objection.

CONTINUITY IN REPRESENTATION ACT OF 2004

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 602 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2844) to require States to hold special elections to fill vacancies in the House of Representatives not later than 21 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with clause 3(c)(4) of rule XIII are waived. General debate shall be confined to the bill and shall not exceed 60 minutes, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on House Administration and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in part A of the report of the Committee on Rules accompanying this resolution. That amendment in the nature of a substitute shall be considered as read. No amendment to that amendment in the nature of a substitute shall be in order except those printed in part B of the report of the Committee on Rules. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend with or without instructions.

□ 1115

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

Mr. HASTINGS of Washington. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all

time yielded is for the purpose of debate only.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, House Resolution 602 is a structured rule providing for the consideration of H.R. 2844, the Continuity in Representation Act of 2004. The rule provides 60 minutes of general debate with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on House Administration and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives all points of order against consideration of the bill for failure to comply with clause 3(c)(4) of rule XIII requiring the inclusion of general performance goals and objectives in a committee report.

The unanimous consent request just agreed to provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment which shall be considered as read.

The original text for purpose of the amendment will not include the text of part A of the Committee on Rules report. The unanimous consent agreement also makes in order the bipartisan amendment of the gentleman from Missouri (Mr. SKELTON), the gentleman from Missouri (Mr. BLUNT), and the gentlewoman from New York (Mrs. MALONEY) in lieu of the Skeleton-Maloney amendment printed in part B of the Committee on Rules report.

The rule provides that the amendments made in order shall be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the whole House or in the Committee of the Whole.

Finally, the rule waives all points of order against the amendments printed in the report and provides for one motion to recommit with or without instructions.

Mr. Speaker, the tragic events of September 11, 2001, made clear that, as much as we might wish otherwise, at some point in the future it may be necessary to replace a large number of Members of this body killed in some type of a terrorist attack.

As my colleagues know, the Constitution has always required that the vacancies in the House, no matter how many or what their cause, be filled only by popular election of the people. The timing of such special elections is set on a state-by-state basis. Some States require that congressional vacancies be filled relatively quickly

while others it takes quite a few months before a special election is held.

Such disparities are little cause for concern when vacancies are few and far between, as has thankfully been the case throughout the long history of this body. In those cases, only the citizens of a district temporarily left without representation are adversely affected until that vacancy is filled.

However, Mr. Speaker, we face a grim new reality today. The reality is that so many vacancies might suddenly occur in the House that our ability to function and to be confident that the decisions made in this Chamber reflect the broad desires of the American people, as expressed by their ballots, could be severely impaired.

That harsh new reality must be faced squarely. This, after all, is a national government and we are the Nation's legislature exercising national responsibilities. We must be able to act in the best interest of the Nation, and never more so than following a major catastrophe. No longer, Mr. Speaker, do we have the luxury of leaving it to the 50 States to decide when it would be possible to fully reconstitute the people's House in the wake of a deadly tragedy.

My colleagues will recall that after the attacks of September 11 the House passed H. Res. 559 expressing the sense of the House that each State should examine its existing statutes, practices, and procedures governing special elections so that in the event of catastrophic vacancies in the House, those vacancies might be filled in a timely fashion. Regrettably, Mr. Speaker, only one State, the State of California, has responded to that request and changed its election laws to provide for expedited special elections in the wake of a catastrophe.

I should note also, Mr. Speaker, that the impetus for that resolution was in part work done by a bipartisan task force chaired by the House Republican Policy Committee chairman, the gentleman from California (Mr. COX), and my colleague across the aisle, the gentleman from Texas (Mr. FROST), who then served as the chairman of the Democratic Policy Committee. The Cox-Frost task force met regularly during the 107th Congress to consider a wide range of issues following under the umbrella of the "continuity of Congress." Since then I am pleased that a number of Members on both sides of the aisle have continued this important dialogue, seeking neither personal gain nor partisan advantage. After all, surely no Member's election will be won or lost over this issue, nor should it.

The bill we will consider today represents but one part of a comprehensive strategy for preparing for the unthinkable. For that is what we are doing, preparing for the unthinkable. And prepare we must. H.R. 2844 is a key element of that strategy. We simply must make it possible for the people to reconstitute the people's House as

quickly as possible if a large portion of this body is suddenly deceased.

To be sure, there are other equally important continuity issues still to be addressed. We must, for example, consider appropriate responses in the event that a large number of Members are incapacitated rather than killed. Certainly in a time of chemical, biological, and radiological weapons, that is a potential scenario that cannot be ignored.

In order to act, the Constitution requires the House to achieve a quorum of Members, a quorum of a majority of all Members living and sworn. When a Member dies or resigns, the Speaker under the rules adjusts the quorum. However, the Framers never contemplated and made no provision for the need to adjust the required quorum when a large number of Members are still living but unable to carry out, temporarily or otherwise, the duties of the office. Simply put, under current law, if more than half the House were to become incapacitated, yet not deceased, the House would be unable to act at a time when the need to do so could hardly be greater.

Therefore, I am pleased, Mr. Speaker, to advise my colleagues that this complex issue of incapacitation will be the subject of a hearing to be held next week by the House Committee on Rules under the chairman, the gentleman from California (Mr. DREIER), whose personal involvement and leadership on these issues, frankly, has gone largely unreported, but has contributed immeasurably to this important continuity in Congress effort.

Indeed, the gentleman from California (Mr. DREIER) and the Committee on the Judiciary chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), are the principal authors of the bill which will shortly be before us, the Continuity Representation Act of 2004.

Mr. Speaker, H.R. 2844, which was reported favorably by both the Committee on House Administration and the Committee on the Judiciary, provides for the expedited special election of new members to fill seats left vacant due to extraordinary circumstances. Such circumstances would be deemed to exist when the Speaker announces that vacancies in the House exceed 100 Members, in other words, more than 100 Members of this body have been killed. When such extraordinary circumstances occur, a special election must be held within 45 days unless a regularly scheduled election is to occur within 75 days.

The bill provides political parties with a 10-day window in which to nominate candidates and sets forth judicial review procedures for announcements by the Speaker regarding those vacancies.

The Congressional Budget Office estimates that H.R. 2844 would have no significant impact on the Federal budget. Although the bill does contain an unfunded mandate, this mandate does not

exceed the threshold amount established in the Unfunded Mandates Reform Act.

Mr. Speaker, in closing, let me acknowledge that there are some Members in this Chamber who believe that we should amend the Constitution to permit the immediate appointment of replacements in the event that a tragedy as I described should occur. That is not my position, Mr. Speaker, for I share the framers' love for their ideal of a House of Representatives of the people, for the people, and elected by the people.

But I do sincerely believe that our colleagues who support the constitutional amendment deserve an opportunity for consideration of the merits of that approach. Many Members will be pleased to learn that we have been assured that such an opportunity will take place in the very near future.

At the same time, I think equally important would be to provide supporters of expedited special elections an opportunity to consider their legislation. Those who disagree should bear in mind that enacting this bill that we are going to take up today will do little or nothing to affect the odds of a constitutional amendment of continuity being adopted and eventually ratified.

And, for at least several years, neither approach precludes the other. Because let us be completely honest about this: even if successful, under the best circumstances, it takes several years to amend the Constitution. So in the meantime does it not make sense to do the work that we can within our existing constitutional framework to prepare for the worst?

Mr. Speaker, that is the question that can only be answered by the entire House. Accordingly, I urge my colleagues to support the rule for the consideration of H.R. 2844 so that the important debate may begin.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, it has been over 2½ years since terrorists commandeered four airplanes and killed 3,000 people in New York, Washington, and Pennsylvania. The events of September 11, 2001, made it abundantly clear that the United States is not immune from attack. But I am deeply concerned that for most Members of the House that day did not make a deep enough impression about what might happen if this institution or its Members were successfully targeted by terrorists or other enemies of our democracy. United Flight 93 was headed here. Had it not been for the brave souls on that plane who fought the terrorists who took over their flight, this very building could have been destroyed. Had Flight 93 not been taken down in the field in Pennsylvania, a

large number of Members might have been killed.

On September 11, 2001, we did not have a procedure in place to reconstitute this body. And on April 22, 2004, we still lack such a plan. I am sad to say, Mr. Speaker, that the bill before us today does not give us a viable plan. And the manner in which this bill is being brought to the floor does a disservice to the very serious issue of continuity of government.

The very fact that the chairman of the Committee on the Judiciary has chosen to push this remedy to the exclusion of any other idea shows that the leadership of this House has chosen to make this a partisan issue. And the stability of our government and its institutions should not now, or ever, become a partisan issue.

In the spring of 2001, the gentleman from California (Mr. COX) and I co-chaired a bipartisan working group that sought to examine the issues in play. No Member in the history of this body has ever taken the oath of office without first having been elected by the people.

Mr. DREIER. Mr. Speaker, would the gentleman yield? I wanted to clarify one point that my friend was making.

Mr. FROST. Mr. Speaker, the gentleman from California (Mr. DREIER) will have time. I need to finish my statement, but then I will be glad to yield.

□ 1130

Mr. FROST. Given that no Member in the history of this body has ever taken the oath of office without first having been elected by the people, the group focused on what might have been done within the law or with statutory amendments to replenish the House in the event of a catastrophe.

We had on a bipartisan basis serious and thoughtful discussions. We made modest but important changes to the rules of House that aid the Speaker in the event of a catastrophe. We passed a resolution that called on the States to put into place procedures by which expedited elections might be conducted in the event that a large number of Members are killed.

But the members of the working group grappled with much larger issues, that of incapacitation, if it would be possible to skirt the constitutional requirements for election through statutory changes, the judicial review of decisions made by a House composed of only a few Members.

We soon realized that those Members as well as many others needed to be addressed by the committees of jurisdiction. We had high hopes of a thoughtful, serious, nonpartisan debate and serious issues. What we got instead was a poorly thought out and wholly inadequate response to the questions we raised 2 years ago.

I know the Chair of the committee will want to seek recognition in a moment, and I will acknowledge that the Chair said yesterday that the Com-

mittee on the Judiciary will mark up a constitutional amendment in the immediate future, and for that we are very grateful. Unfortunately, that amendment is not here on the floor, and we do not know when that amendment will actually have the opportunity to be voted on upon the floor.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, let me clarify again the statement that I made when this question came forward.

The chairman of the Committee on the Judiciary is here on the floor, and, as you know, in the past couple of weeks he and I have been discussing and I have shared those conversations, and the chairman has indicated his willingness to at the next markup the Committee on the Judiciary holds, they will mark up the constitutional amendments that you all put forward.

And I think it is also very important for us to note that we have been seeking, having worked with the task force that the gentleman and my colleague, the gentleman from California (Mr. COX), shared to work in a bipartisan way on this, and I know from having had discussions with friends on the gentleman's side of the aisle that there is, in fact, bipartisan support for the effort that we are proceeding with here. And that is one of reasons that as we look at the structure of this rule, we did make in order amendments offered by Democrats.

I see my friend, the gentleman from Connecticut (Mr. LARSON), here who has a thoughtful one. I know the gentleman from Washington (Mr. BAIRD) has been working on this issue as well. I will say to my friends, bipartisanship is something that we have been seeking on this, and I hope at the end of the day we will be able to find that.

Mr. FROST. Reclaiming my time, Mr. Speaker, the issue is of serious magnitude. While the chairman of the Committee on the Judiciary has indicated he will mark up a constitutional amendment, we have no assurance that that amendment will be considered on the floor by this body in a timely manner this year.

Let me, if I may, address comments not just to the chairman of the committee and the chairman of the Committee on the Judiciary, but to all the Members of this House. The reason that some of us and many of us feel that this legislative approach is inadequate, and that a constitutional approach is the only one that can serve this country, is that if a number of Members were killed in a common disaster, the period of time that would pass before this House could be reconstituted under the bill that is being voted on today is unacceptable. We would find ourselves without a functioning Congress perhaps for months under this bill.

Now, there is an historical anomaly in our Constitution that provides that

Members of the Senate when they die can be replaced by an appointment of a Governor, and there is no such procedure in the Constitution for Members of the House. The reason for, the gentleman will have plenty of time, the reason for this historical anomaly is that when the Constitution was originally drafted, Members of the Senate were chosen by appointment. They were appointed by their State legislatures, and when we went from an appointed Senate to direct election of the Senate, the power of Governors to replace Senators was continued.

There was no such provision for Members of the House. That does not mean that in this 21st century today that there should not be such a procedure. The fear is that if a large number of Members were to be killed in a common disaster, that the Congress could not function in a timely manner when the country would most need a Congress.

Now, there is a second unfortunate aspect of current law. Under current law, a quorum of the House of Representatives is a majority of those Members living and sworn into office, sworn and living, so that if, of the 435 Members of the House, if, for sake of argument, 400 were to be killed in a common disaster, and 5 survived because they were not present in the Chamber at the time of the disaster or for whatever reason, 3 Members of those remaining 5 would constitute a quorum. And you could say, well, then the Congress could continue to function with those 5 Members.

The question that I would pose is would decisions made by three individuals be respected by the country at a time of crisis? We have to provide for continuity in our government, and for us to pretend that a terrible disaster like this could never happen, and we all hope that it never happens and trust that it never happens, but for us to pretend that it could not happen, and that if it did happen, oh, we would have a leisurely pace of months to replace Congress during that time does a disservice to our form of government and to the people that we represent.

Now, there are disputes and concerns on the type of constitutional amendments, on how you provide for the prompt, orderly replacements of Members. People have different views on that. Some people feel that the Governor should be able to appoint their replacements just as the Governor can appoint a Senator. Others feel that the Members in advance should be able to put a list, put together a list and designate who their successor would be, or perhaps have a list and the Governor chooses from that list. There are a lot of provisions that could be considered.

What we are saying is that this House now, not a couple of months from now or a couple of years from now, should face up to this hard decision, should consider a constitutional amendment on this issue, submit it to the people so that if, God forbid, there

were a disaster in which all or substantially all the Members of the House were killed in a terrorist attack, that our government would go on. If we do not do this, then we will cede total power and authority to the executive branch, if there is an executive branch at the end of a common disaster, and presumably there would be in some form, and there would be no functioning legislative branch for a period of months.

That is why many of us, and I will complete my statement, the other side has plenty of time to make their points, that is why many of us feel this legislation is inadequate and is a poorly thought out response to a situation that, while we hope never happens, could put this country and our form of government in serious jeopardy.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules, a gentleman who has worked extremely hard on this continuity issue.

Mr. DREIER. Mr. Speaker, I thank the gentleman for yielding me time. I appreciate his very, very thoughtful opening statement.

I want to thank my friend, the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary with whom I have been privileged to work with on this; the whip; I mentioned my friends, the gentleman from Texas (Mr. FROST) and my colleague, the gentleman from California (Mr. COX) who in the last Congress chaired a task force on this. I know the gentleman from Washington (Mr. BAIRD) and the gentleman from Connecticut (Mr. LARSON) are very thoughtful Members who have spent a great deal of time contemplating this issue.

Mr. Speaker, September 11 of 2001, as we all know, was a devastating day for our Nation. It really launched the global war on terrorism. It changed all of our lives. And many of us had not pondered the thought of this Capitol being under attack. I was, in fact, the last person to leave this building on September 11 of 2001, and I did so when one of the guards said that there was a plane they had lost contact with, and it was headed right towards this building, and it ended up being the plane that was very courageously taken down by those passengers into the ground in Pennsylvania.

Since that time, Mr. Speaker, a great deal has been done focusing on this issue of what would happen if we were to see a tremendous loss of life of Members of the House of Representatives.

We know that almost immediately the Speaker of the House took some steps. He established the ability to adjourn to an alternative place and to declare an emergency recess, the ability to effect a joint leadership recall from a period of adjournment through des-

ignees, and requires the Speaker to submit to the Clerk a list of designees to act in the case of a vacancy in the office of the Speaker.

These are actions that the Speaker has taken codifying a number of important things, including the quorum provision, which does allow us to continue our work.

As I listen to the remarks by my friend from Dallas (Mr. FROST), the ranking minority member of the Committee on Rules, I do think it is important to note that we do have a bicameral Legislature, and the United States House of Representatives does not operate unilaterally. So there would, even if we went through a period of time, and I would say it would not be months. Our legislation that the gentleman from Wisconsin (Mr. SENSENBRENNER) and I have calls for special elections to be held within 45 days following that disaster.

Let me say that the legislation that we do have addresses a number of very important issues, but I want to get to this issue of service here, representation, and what our framers went through on this question.

When I was an undergraduate, I had a professor, with whom I spoke last night, who pounded the Federalist Papers into me. It was after that great Constitutional Convention, and I remember when we marked the bicentennial of the Connecticut Compromise, and the House of Representatives convened in Philadelphia on July 16 of 1987 to mark that. It was the Connecticut Compromise that established this bicameral Legislature, which is a very, very important thing for us to note.

And what I did last night is I went through and I started rereading the Federalist, and I went to some of the items that were mentioned, Federalists 52 through 57, where James Madison talked at length about this institution. And some of the things that I believe are important for us to note on this as we look at the work of James Madison is that he talked about as he was justifying the Constitution this importance of the institution being elected, and a couple of items that he raised.

He said in Federalist number 53, "Where elections end tyranny begins."

As my friend, the gentleman from Washington (Mr. HASTINGS), pointed out, it was very clear that this House is the only Federal office where no one has ever served without having first been elected. And they talked about the fact that this is the body of the people. The other body is the body of the States. Madison in Federalist 52 wrote, "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."

He went on in Federalist 57 to write, "Who are to be the electors of the Federal representatives? Not the rich more than the poor, not the learned more than the ignorant, not the haughty airs of distinguished names more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States."

And Madison rejected the idea that appointment of Members is acceptable to the American public. He said, "The right of suffrage is certainly one of the fundamental articles of democratic government and ought not be regulated by the Legislature. A gradual abridgement of this right has been the mode in which aristocracies have been built on the ruin of popular reforms."

I think it is very important for us to understand that there have been times in our Nation's history where we have faced even greater difficulty than we do today, and that was the Civil War. If we think back to the time of the Civil War, this Capital was surrounded by troops who were threatening our very being. And yet President Abraham Lincoln proceeded with elections, understanding how critically important that is for our Republic's survival.

□ 1145

That is why when we look at some of these options, the stand-in provision, whereby Members of the House would actually select their successors if they were to lose their life, we ask about the challenges that would be before us. Will stand-ins be responsible for passing laws, declaring war, or suspending habeas corpus or perhaps both? Will stand-ins be running for office in special elections? Would those follow soon after their appointments? What incentive does someone who has gotten into this House by appointment have to, in fact, be responsible to the people? Is it possible that we could, through intrigue or cabal, see some make an attempt to prevent the prospect of elections in the future?

I just believe that when we take this very, very unique institution, the people's House, where no one has served without having been elected and move in that direction away from elections, we threaten the very basis on which this institution is founded. So that is why, as we look at this tough challenge, this legislation is the most responsible way to deal with it.

If we look at the loss of more than 100 Members, the idea of having the States hold special elections in that 45-day period is something that is doable. My State of California went through last year an unprecedented time. We had the recall of a Governor; and with the election that took place, it was 55 days after we saw certification, and it was not a single congressional district where 644,000 people reside and there are two to three candidates. We had 125 candidates on the ballot, and we have a State of 35 million people; and I am happy to say that that election came

off without a hitch. Many people had predicted doom and the fact that it could not work; and that is why I believe that for us to deal with this situation, if we do see tremendous loss of Members of Congress, this country will have suffered greatly.

I am convinced as we look at the struggles taking place in Iraq today that the building of a democratic institution is something that is very important; and I am convinced, too, that following a tragedy, after people are feeding their families and getting a roof over their head, choosing their leader is a very important key to success and proceeding and survival; and that is why I believe that this legislation would, in fact, provide us an opportunity to do that.

We are going to have a great chance for rigorous debate today, and I will say that it is because I believe that Members of the minority who are proponents of the amendment to the Constitution, that I did get in contact with the chairman of the Committee on the Judiciary and asked him to do this, and he agreed very readily to at his next markup, as I just said, report out the constitutional amendment.

While I am not in a position to guarantee, I would say to my friend from Dallas, to say exactly when this would be scheduled, we are trying to have a full debate on the constitutional amendment on the floor, but as the gentleman from Washington (Mr. HASTINGS) said in his opening remarks, it seems to me to be very important for us to use the structure that exists for us today, and that is, the legislative structure, to deal with this.

This legislation may not be the panacea, but I think that it is so important to realize again, Madison said, "When elections end, tyranny begins," we should do everything we possibly can to make sure that we keep the very precious election process.

I thank my friend for yielding me the time.

Mr. BAIRD. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I know the gentleman from Texas (Mr. FROST) has time, but I yield to the gentleman from Washington.

Mr. BAIRD. Mr. Speaker, I appreciate the gentleman's reference to Madison. I have spent a fair bit of time studying Mr. Madison as well.

My question would be, where in the Federalist Papers or in the entire body of information from the Constitutional Convention do we see provisions for how this body should deal with the complete elimination of its Members or for how the executive branch should function in the absence of a constitutional quorum within the Congress?

Mr. DREIER. If I could reclaim my time, what I would say is that the Civil War was a time when this Republic faced its greatest threat, greater than the threat that we face today, and the answer that was provided at that point by President Lincoln was to proceed

with elections, and so, of course, there was tremendous uncertainty at the founding. We saw all kinds of challenges, but Madison continued to go back time and time again.

He argued at first for annual elections and then they ended up with this issue of biennial elections, and so we have had the Speaker establish this quorum requirement.

My friend says it is true that it is possible that very few Members could be serving here in the House; but within 45 days, those special elections would be held under the structure that we have, and there would be a chance for us to deal with those issues.

I would say that I somewhat rhetorically ask what issues would we be dealing with here in the House of Representatives? Health care? a tax issue? No, we would be dealing with the crisis that would be before us at that time, and that is why I am convinced that the best way to do that is to have the people's representatives make that decision, and I am convinced that that could happen within a short period of time.

I thank my friend for his contribution, and let me again compliment him for all the time and energy he has put in the effort.

I thank my friend for yielding this time, and I look forward to our debate.

Mr. FROST. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, this is as serious a matter as we could have before the House. We run the risk of becoming a herd of ostriches in putting our heads in the sand.

This is not the 18th century. This is not the 19th century. It is not even the 20th century anymore. It is the 21st century. No one in the 18th century or the 19th century could have contemplated the type of terrorist act that could potentially eliminate at one time all or virtually all the elected Members of this House. We hope that never occurs, but for us to ignore the possibility that it could occur in the 21st century does a great disservice to the American people.

Mr. Speaker, I yield 5 minutes to the gentleman from Connecticut (Mr. LARSON).

(Mr. LARSON of Connecticut asked and was given permission to revise and extend his remarks.)

Mr. LARSON of Connecticut. Mr. Speaker, I want to compliment the gentleman from Texas and associate myself with his remarks.

I rise to reject, without prejudice or malice, the previous question, the rule, and the underlying bill. As has been mentioned, this is not partisan disagreement because the issue does not advantage or disadvantage either party. This is a disagreement on the wisdom of the proposed policy. I am against the bill because it fails to correct the most egregious problems caused by forcing all States to conduct elections within 45 days of the Speaker's announcement of mass Member fatalities.

Regardless of how one feels about a constitutional amendment to address congressional continuity, we should defeat this bill because it will not work in practice and does not address the need to "stand up" the Congress immediately following a disaster. It does not support the immediate restoration of representative democracy, a key element in the Connecticut Compromise, noting that as important as it is that the people elect representatives, it is equally important to note that the people they send here represent the States.

I want the Members in this body, because this is a difficult and complex issue, to understand its complexity; and the best way that I have seen to relate this to Members is to evoke two images in their mind.

The first image is that of Members of this body, huddled in the Capitol Police office, waiting to hear word of what happened from our leaders who were somewhere, and who later that afternoon conveyed to us over the phone what had transpired and what happened and asked that this body not return here to the Capitol, out of concerns for safety. The Members there rejected that overwhelmingly, and came en masse—and in one of the most remarkable and memorable moments in our history—stood on the steps of the House—united. It is a moment I will always cherish and remember, and I want my colleagues to reflect on that, it was an important symbol that we sent out to our people. Immediately standing there, Democrat and Republican, Senate and House, all united.

The other image is this: not too long after that event, we convened in this House, a joint caucus called by the gentleman from Illinois (Speaker HASTERT) and the gentleman from Missouri (Minority Leader GEPHARDT). The issue was different. It dealt with anthrax. There were concerns, purportedly a deal had been agreed to, signed off by the President and the Senate, that because of concerns as they related to safety, that we would close down this Chamber, and people would go home.

It was not met agreeably amongst the caucus. But our leaders appealed to our better angels, and we agreed to go home. The Senate did not. Recall, if you will, how you and your colleagues felt viscerally when the papers reported that the Senate was here, and the House had gone home.

I asked the Committee on Rules to make four amendments in order. The Committee on Rules only made two in order. My two proposed amendments, which were taken prisoner by the committee, would have allowed States to use their regular means of selecting candidates, and would have avoided trampling on 40 years of voting rights laws.

Under this bill, political parties must select candidates within 10 days of the Speaker's declaration, or give up their place on the ballot. So much for the

participatory process of candidate selection.

In my heart, and I thought it was great discussion in front of the Committee on Rules, I agree with what the gentleman from Massachusetts (Mr. MCGOVERN) had to say. He suggested in the Committee on Rules that this issue is of such gravity, and such importance, that it actually transcends the normal committee processes, and that, in a joint committee, much like the one that the gentleman from Illinois (Mr. HASTERT) and the gentleman from Missouri (Mr. GEPHARDT) called, we should discuss this issue amongst ourselves.

These are complex issues that require us to examine them thoroughly, but I do not believe the underlying bill provides that. Some of the things eloquently addressed by the gentlemen who are proposing the underlying bill, do protect, do promote, and do give great glory to this body and its grand tradition.

Others have spoken equally eloquently on that issue as well, in talking about the need for representative democracy to be promptly installed, while making sure that in fulfilling the mission of having people duly elected, we do not trample on the democratic rights and the processes by not allowing enough time.

I urge a "no" vote.

Mr. HASTINGS of Washington. Mr. Speaker, how much time remains on both sides?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Washington (Mr. HASTINGS) has 6 minutes remaining. The gentleman from Texas (Mr. FROST) has 14 minutes remaining.

Mr. HASTINGS of Washington. Mr. Speaker, I reserve my time.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, there may be differences on this bill, but the issue I want to raise is one I am pleased to say there are no differences on.

I appreciate this debate and the country appreciates it. I have already raised the matter with the gentleman from Wisconsin (Mr. SENSENBRENNER). I appreciate the way in which he received the fact that the District of Columbia and the four territories are technically not included in this bill because it authorizes the States to hold a special election.

I come to the floor only before the local press and the national press raise it with me. The District of Columbia, of course, is likely to be a preeminent target. The other territories might well be. It might be easier to get to them than to us. I can understand how such an oversight would occur because we do not have the vote on the floor. We all have the vote in committee.

In any case, I know the House would want everybody to be represented in case there was a catastrophe of any kind, and I want to give my thanks once again to the chairman, the gen-

tleman from Wisconsin (Mr. SENSENBRENNER) for receiving this issue which he has assured me will be corrected.

I thank the gentleman for yielding me the time.

Mr. FROST. Mr. Speaker, I yield 8 minutes to the gentleman from Washington (Mr. BAIRD).

□ 1200

Mr. BAIRD. Mr. Speaker, I thank the gentleman from Texas (Mr. FROST) not only for yielding me this time, but for his leadership on this issue. I also want to acknowledge the gentleman from California (Mr. COX) for his work, the gentleman from Connecticut (Mr. LARSON), the gentleman from Rhode Island (Mr. LANGEVIN), the gentlewoman from California (Ms. LOFGREN), the gentleman from California (Mr. SHERMAN), and the gentleman from California (Mr. ROHRBACHER), all of whom, I think, have proposed innovative and real solutions to this problem.

It is the night of the State of the Union Address. The President of the United States is here addressing the assembled body of the House and Senate. Behind him sits the Vice President of the United States in his capacity as President of the Senate. The Speaker of the House sits next to him. The Joint Chiefs of Staff are here, the diplomatic corps, and the judges of the Supreme Court.

In midspeech, the television screens and radios across this country go blank. No one knows what has happened. A few moments later, one station reemerges on the air and says, "Ladies and gentlemen, we have received word that a nuclear weapon has been detonated in our Nation's Capital. It apparently was set off very near the Capitol itself. We have no preliminary word, but it is quite possible that all Members of the House and the Senate and the President and his Cabinet, save one Member, have perished."

At that moment someone must tell our Nation and must tell the world what happens next. The bill before us answers that question with the words chaos and uncertainty. There are provisions put forward that would give a constitutionally valid mechanism of rapidly reconstituting this body, of assuring the Article I checks and balances that were so important to Mr. Madison, to that individual, Mr. Washington, and to the Constitutional Convention. But, Mr. Speaker, 2½ years after September 11, we have not been allowed to debate those measures that are true solutions before this body.

We have argued here, and we have heard eloquent arguments that elections are important, and let me be clear about something: Not one proposal that requires or provides for a temporary amendment, not one, would eliminate elections. We all share that conviction, all of us do, and it is duplicitous to suggest otherwise.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. BAIRD. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding. And, Mr. Speaker, I in no way said that people are trying to avoid elections. What I am arguing is, if we do move in the direction of appointments, we create the opportunity for Members of this institution who would serve here by appointment to potentially move in that direction.

Mr. BAIRD. Reclaiming my time, Mr. Speaker, it is my understanding the gentleman from California and the Chair of the Committee on the Judiciary have sent a letter to our colleagues suggesting that people have attempted to ban elections. If the gentleman would wish to retract that, I would welcome that opportunity, because it is false, and the gentleman knows it. I believe it was circulated under the gentleman's signature.

Mr. DREIER. Mr. Speaker, if the gentleman will continue to yield, I would just say that I have not seen the letter, and I do not believe that we are seeking to ban elections, so I want to make that clear.

Mr. BAIRD. Mr. Speaker, I thank the gentleman for that clarification.

It is absolutely true. Not one proposal seeks to ban elections. What do we seek? Checks and balances. We seek to ensure that the Article I responsibilities of declarations of war, appropriating funds, impeaching a President, and all the other things that this body is tasked for in Article I, not the executive branch, are preserved, and the bill before us today does none of that. Does none of that.

It leaves this country and the world with an unelected person serving in the executive branch and claiming extraordinary unconstitutional powers, and that is perilous for a republic, not simply a democratic republic, but a republic where representatives carry the voice of the people to this Capitol.

Let me tell you what I think is wrong with the bill beyond that. In providing for a 45-day election, let me, first of all, say that many experts in this country have said a 45-day period is insufficient time for a genuine election, and that includes the head of the Elections Board of the State of Wisconsin, who said a minimum of 62 days would be necessary. It includes our own Member of this House, the gentleman from Rhode Island (Mr. LANGEVIN), a former secretary of state, who has conducted elections. It is not enough time.

Furthermore, what happens if a State cannot conduct its election in 45 days? What happens? A nuclear weapon is not only detonated here, but, in a quite plausible scenario, it is detonated also in New York City and in San Francisco, California. Are they to conduct elections in 45 days in those circumstances? Will the Members subsequently elected not be seated? What happens to the structure of this body if a few Members survive, and then more Members come as one election is held? Who is the Speaker of the House?

And by the way, let me clarify something. The Constitution is absolutely

clear that a quorum is not a majority of those chosen, sworn and living, it is a majority of the membership. This notion that three or four people would be enough to have a House of Representatives flies so in the face of what the Framers intended.

The first official act of the first Congress was to adjourn for lack of a quorum. They did not believe for a moment that a handful of people should be present and maybe make decisions to take this country into war, or impeach a President, or levy taxes, or appropriate funds. A majority must be present. What happens until that majority comes back under this rule? Again, chaos and uncertainty.

We have an opportunity to discuss real solutions. A bipartisan, non-partisan commission made up of scholars and distinguished statesmen, people like Alan Simpson from Wyoming, hardly, hardly a liberal Democrat, hardly a partisan, a true statesman, joined together and said let us look at this issue. To a person, that commission to a person began and said, we do not want to solve this by amending the Constitution. And yet after a year of study and review, to a person they agreed that that is the solution, with great regret, that we must resort to.

And, no, it does not take away your right to elect a Representative, but it preserves your right to have a Representative here when we decide how to respond to that attack. And it says you shall have the opportunity to have an election to replace that person as promptly as possible, through a real election, not a sham, expedited election that disenfranchises independent voters, as the bill does today. To a person these statesmen started with saying we do not want an amendment, and they reached the conclusion that we have to.

Let me close with this. On September 11, on flight 83, those passengers gave their lives to give us a second chance. That fourth plane was heading here with the full intent to kill everybody in this building if it possibly could. We know that our adversaries would seek nuclear weapons. We know nuclear materials are available. We know if they get one, they will set it off, and they will do so in this Capitol. We have been given a second chance.

The September 11 Commission has shown what happened to this country and to the world when advanced warnings were not heeded and action was not taken. Shame on us, eternal shame on us, if we do not take action to protect the Article I responsibilities of this body. Protect the right to elect Representatives, but protect the right to have a Representative and protect the checks and balances and separation of powers that have preserved this great Republic.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, at 9:50 in the morning on September 11, 2001, I was standing in this Chamber waiting to bring up three bills that had come out of the Committee on the Judiciary. At that time the Sergeant at Arms told Speaker HASTERT that another plane had been unaccounted for; that it was heading in the direction of Washington, D.C., and the Speaker promptly ordered the evacuation of the Capitol and told me to run for my life.

Had that plane not left the gate at the Newark, New Jersey, airport, I would not be standing here today, nor would this building be standing here today. I think that gave me pause to think of what would happen to preserve this unique representative government should there be a disaster that wiped out the entire Congress. And the debate today goes basically to the issue of whether the reconstituted House should preserve the tradition that the House of Representatives has always consisted of Members that were first elected by the people, or whether we should have appointed Representatives, appointed by the Governor, appointed by the legislature, or appointed by ourselves before we passed away.

Now, if Armageddon should take place and a disaster should happen, we can have an executive branch that is headed by an appointed Cabinet Secretary under the Presidential succession law. We could have a Senate of 100 Members appointed by the Governor of the respective States. And if we should amend the Constitution to allow the appointment of Members of the House of Representatives, then we would have an appointed House. Is that what the Framers of the Constitution had in mind, an appointed President, an appointed Senate, and an appointed House of Representatives? No way. And the comments of James Madison in the Federalist Papers are right on target.

So the issue today is whether we should amend the Constitution to allow for the appointment of interim Representatives or figure out a way to elect replacement Representatives who would come to Washington, D.C., or wherever the Congress would be meeting, with a mandate from the people at the time of the most severe crisis in the history of this country. And this bill attempts to set up a mechanism so that we can have prompt special elections.

Now, no election is perfectly run. We have sure found that out 4 years ago in the Presidential election. But I am here to tell you that elections, no matter how imperfect they are, are much better than having an appointed House of Representatives where the loyalty would be nowhere but to whomever made the appointment.

Now, I have heard a lot of complaints from my friends on the other side of the aisle that I am stonewalling consideration of a constitutional amendment. That is not true. We had a hearing last year on the constitutional amendment proposed by the gentleman

from Washington (Mr. BAIRD). It did not get very much support. But at the first markup of the Committee on the Judiciary that we will have, we will take up his constitutional amendment and send it to the floor. I will vigorously oppose it on the principle that I am opposed to having appointed Members sit in this House of Representatives. But we ought to have a debate on this, and we ought to see who wants to have our replacements be elected or our replacements be appointed should we be wiped out.

Then I hear the complaints that 45 days is too quick to be able to organize a fair election. That is not true. In Virginia, when there is a vacancy in the Virginia General Assembly due to a death or a resignation, there have been special elections that have been held within 12 days after that vacancy occurred, and nobody has complained that the successor Representative was unfairly elected.

During World War II, the British House of Commons, which, like the House of Representatives, has entirely consisted of people who have been elected by the people since 1215 A.D., they were able to have special elections within 42 days after a vacancy occurred. Notwithstanding the point that the Nazis were bombing Britain every night incessantly, they still were able to stand up and preserve the notion that people should come to the House of Commons with a mandate from the people and not be appointed by anybody else.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, I thank the gentleman for yielding me this time.

The chairman of the Committee on the Judiciary has properly framed the debate that we should be having to date as a choice between this bill and the options of having constitutional amendments. What he failed to indicate was that the rule does not make in order that debate, and it is for that reason that I rise in opposition to the rule itself, because this is not an issue about which there is a right or wrong answer. There are a number of different alternative solutions to the problem that present themselves if a number of people are wiped out in this body.

What we ought to be doing is having a serious debate about each one of those options so that each Member of this Congress can make a reasoned evaluation of what way to go. So I think we should defeat the rule, go back to the drawing board, and let us bring all the options to the body for debate.

□ 1215

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, I want to express my appreciation to the chairman of the Committee on the Judiciary for indicating he would bring my proposed amendment up; but I would also

like to underscore that my belief is we should not simply bring my amendment up. The gentleman from California (Mr. ROHRABACHER) has a proposed amendment, the gentlewoman from California (Ms. LOFGREN) has a proposed amendment, as do several other Members.

I proposed a rule that would allow for multiple possible amendments to be considered, plus ample time for debate and amendment of those amendments until we move toward two-thirds vote for final passage.

Last night on this floor I met with many Members of this body, and I asked them if they knew enough about this bill today to vote on it in an informed way. The collective answer was, no. Because of that, we should defeat the rule before us today, give this issue adequate time, as the gentleman from North Carolina (Mr. WATT) said, and make sure that all opportunities are discussed.

I am pleased that the chairman of the Committee on the Judiciary wants to address amendments, but I would respectfully ask the gentleman to not just simply consider mine; consider others so various approaches may be debated and this body has a chance to choose the true and best solution.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, I rise in support of this rule, but in opposition to the underlying bill, H.R. 2844. This is a very serious issue, and we have heard two sides of the debate. One emphasizes making appointments, and the other emphasizes having expedited elections.

I have a constitutional amendment proposed, H.J. Res. 92, which satisfies both of these objectives and would permit Members when they are being elected by the public to designate a successor in case they are incapacitated or killed during the time they are in office. This would permit the public to vote on someone's successor as well as the person running for office. It seems to me this is the best approach.

The current approach that we are being offered today in H.R. 2844, I do not believe is the best way to go because it would leave the party leaders to nominate who the choices are for the public. In essence, the party hacks are going to control who the public can vote on. Let us give the public a chance to really vote in an ordinary election and oppose H.R. 2844.

Mr. Speaker, I rise in support of this rule, but in opposition to the underlying bill, H.R. 2844.

Continuity of representation in Congress is a very serious matter. On one side of this debate we will hear that we must have temporary replacements as quickly as possible in a national emergency. On the other side, we will hear that to be legitimate, any replacement House Members need to be chosen through the electoral process.

I happen to think both sides are right in their stated principles, and that's why I've introduced a congressional succession constitutional amendment, H.J. Res. 92, which I believe satisfies the core objectives of each side.

Under my proposal, each general election candidate for the House and Senate would be authorized to appoint, in ranked order, 3 to 5 potential temporary successors. For these appointments to be valid, the successful candidate would have to have submitted them in publicly available form at least 60 days prior to the election. In the case of the elected legislator's death or incapacity, the highest ranked person on the list of successors would become the Acting Senator or Representative. Determination of incapacity in my proposal generally follows the precedent of the 25th Amendment, under which the President either declares his own incapacity, or people he has appointed do so.

The legitimacy of a successor designated under H.J. Res. 92 temporarily succeeding a deceased or incapacitated Representative or Senator is similar to that of a Vice President succeeding a deceased or incapacitated President—not separately elected, but chosen by the principal and known well in advance of the election. Primarily to provide the incentive for incumbent and non-incumbent candidates to submit successor lists, state governors would be empowered to appoint temporary replacements only if no such list is submitted, or if no one listed is able to serve.

Continuity of representation, I think we would all agree, means that the death or incapacity of Senators and Representatives should cause as little change in the composition of Congress as possible, which means that replacements should be politically as much like the deceased or incapacitated Member as possible. Who better to determine who fits that bill than the elected official him- or herself?

There is no reason to limit a satisfactory solution to the "continuity of representation" problem to a situation horrible enough to kill or incapacitate a quarter or more of the House. Even 50 or 20 Representatives being killed or incapacitated could make a profound change in the direction and control of the House. And the death or incapacity of even one Representative deprives 600,000 U.S. citizens of representation for the several months it typically takes for the vacancy to be filled. Also, the legitimacy of a congressional succession plan is more likely to be accepted in a national emergency if it has previously worked in smaller tragedies.

When State governors use their current power under the 17th Amendment to appoint temporary Senators, they naturally appoint someone who is politically like themselves, even if that appointee is the complete political opposite of the deceased Senator.

We saw this played out most recently in the aftermath of the tragic death of Senator Paul Wellstone (D-MN) when control of the Senate was in the hands of the third-party governor of Minnesota.

Also, during the last Congress there was a constant theme of speculation about the fact that the death in office of the aged and ailing Senator Strom Thurmond (R-SC) would allow the Democratic governor of South Carolina to change party control of the senate for up to 2 years.

There is also clearly a democratic problem with the status quo in the House in which we allow death or incapacity to leave the seat vacant and the district unrepresented for months.

But H.R. 2844 in some ways would actually make the democratic problem worse. Although replacement would be sooner than the status quo, the replacement would be someone whose nomination was decided by party bosses, not by a vote of the people. For all the talk about ensuring that this House of Representatives stays "the people's house," that is just not a democratic way of filling vacancies.

By contrast, H.J. Res. 92 gets an immediate replacement already vetted by the voters, and then allows States to get a regularly elected replacement who is both nominated and elected by the voters. It is obvious to me that H.J. Res. 92 is better for both the continuity of Congress and for democracy than H.R. 2844.

I ask my colleagues to defeat H.R. 2844, and support my congressional succession constitutional amendment, H.J. Res. 92.

Mr. FROST. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the matter we are about to consider today, how to keep the House of Representatives functioning in the event of catastrophe, is one of the most serious and important issues we will ever consider.

When I cochaired the Continuity of Congress Working Group in 2002, Members from both parties took a non-partisan approach to the issue and kept an open mind as to how we could achieve a solution.

How times have changed. The open-minded, nonpartisan spirit we had when we began discussing this issue has completely disappeared. The restrictive rule that the Committee on Rules reported out last night has completely convinced me that this House is now putting partisanship ahead of its institutional duties.

Mr. Speaker, a number of very intelligent people have devoted a lot of time and effort considering this question. I think it is a tragedy that their ideas will not be debated today. That is why I am urging a "no" vote on the previous question. If the previous question is defeated, I will offer an amendment to the rule. My amendment will provide that immediately after the House passes H.R. 2844, it will take up the bill of the gentleman from Washington (Mr. BAIRD), H.J. Res. 83, under a comprehensive and thorough debate process that this issue deserves. The Baird bill would amend the Constitution to provide for an emergency procedure to keep the House of Representatives working should a significant majority of this House be killed or incapacitated. I urge a "no" vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as evidenced by the remarks, this is a very important issue. I want to remind Members, in my opening remarks I mentioned that there are several things that need to be taken up. One, obviously, is a quick way to try to get the elected representatives back here. The other is the issue of incapacitation, which will be taken up next week in the Committee on Rules, and also the issue of a constitutional amendment of the various types that are floating around. That was confirmed by the chairman. There will be more debate on the issue. This is the first step, however. We ought to pass this rule, pass this bill, and continue our discussion on the other issues.

GENERAL LEAVE

Mr. HASTINGS of Washington. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 602.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. FROST. Mr. Speaker, reserving the right to object, and I will not object, but I would like to point out that in the Committee on Rules, and I understand Members want to revise and extend their remarks on the rule and submit all kinds of material, but I would point out when this rule was being considered by the committee, we asked for an additional hour of debate on the bill itself and we were denied that by a rollcall vote. That vote was Committee on Rules record vote No. 247, three "yesses" and six "noes."

I will not object to Members being able to revise and extend their remarks, but I wish we had provided for additional debate time on this very important piece of legislation. That was a reasonable proposal that was made in the Committee on Rules and was rejected by the other side.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we are going to have more debate on this important issue of continuity in Congress. We will have several more opportunities, and I suspect we will have plenty of time to have that debate. I certainly hope we will.

Mr. LINDER. Mr. Speaker, I rise in support of this rule, and I thank my friend and colleague from the Rules Committee, DOC HASTINGS, for yielding me this time.

H. Res. 602 is a fair, structured rule, which House members on both sides of the aisle

should strongly support. It makes in order a total of four amendments, all of them offered by members of the Minority Party. Debating these amendments will allow the House to work its will on some of the key issues raised by H.R. 2844.

I also rise in support of the underlying legislation, H.R. 2844. In his Second Treatise on Government, John Locke wrote "the first and fundamental positive law of all commonwealths is the establishing of legislative power. Itself is the preservation of the society and of every person in it."

Today, we examine whether the current mechanisms by which our government is created and maintained sufficiently provides for the continuation of representation in the event of a horrific disaster. Our efforts should answer the question of whether we are, in modern times, prepared to provide a rapid governmental response if and when disaster strikes that very government.

The executive branch has made contingency plans so that in a dire emergency it would be able to continue functioning on behalf of the American people. This is a prudent thing to do. The House in its opening day rules package included significant positive rules changes stemming from the recommendations made by the bipartisan Continuity of Congress Task Force.

Today, with the consideration of H.R. 2844, the U.S. House of Representatives begins to put in place a new system for ensuring the continuity of the Congress in the aftermath of a catastrophic event.

H.R. 2844 provides that, if more than 100 House Members are killed, the Speaker of the House can declare that "extraordinary circumstances" exist. Such a declaration would trigger expedited special elections in those districts whose Members have been killed within 45 days. The political parties are given 10 days within which to nominate candidates for these elections.

The important constitutional principle that this bill upholds is the unique nature of the People's House. The government should neither exist nor change but with the express will of the people by whom and for whom it was created. Without an elected House, legislation could be passed by a Federal Government composed entirely of the unelected. We must continue the tradition of the People's House, and H.R. 2844 does so.

With that, Mr. Speaker, I urge support of this important rule.

The material previously referred to by Mr. FROST is as follows:

At the end of the resolution add the following new section:

SEC. 2. On the next legislative day after the adoption of this resolution, immediately after the third daily order of business under clause 1 of rule XIV, the House shall resolve into the Committee of the Whole House on the state of the Union for consideration of the joint resolution (H.J. Res. 83) proposing an amendment to the Constitution of the United States regarding the appointment of individuals to fill vacancies in the House of Representatives. The first reading of the joint resolution shall be dispensed with. All points of order against consideration of the joint resolution are waived. General debate shall be confined to the joint resolution and shall not exceed one hour equally divided and controlled by Representative Baird of Washington and the chairman of the Committee on the Judiciary. After general de-

bate the joint resolution shall be considered for amendment under the five-minute rule in accordance with sections 3 and 4. The joint resolution shall be considered as read. No amendment to the joint resolution, or to the joint resolution as perfected by an amendment in the nature of a substitute finally adopted, shall be in order except as specified in this resolution. Clause 6(g) of rule XVIII shall not apply with respect to a request for a recorded vote on any amendment.

SEC. 3. (a) Before consideration of any other amendment, it shall be in order to consider the amendments in the nature of a substitute specified in subsection (b). Each such amendment may be offered only if the Member has caused the amendment to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII, may be offered only in the order specified, may be offered only by the Member designated or a designee of such Member, shall be considered as read, shall be debatable for one hour equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment except as specified in section 4. All points of order against such amendments are waived (except those arising under clause 7 of rule XVI). If more than one amendment in the nature of a substitute specified in subsection (b) is adopted, then only the one receiving the greater number of affirmative votes shall be considered as finally adopted in the House and in the Committee of the Whole. In the case of a tie for the greater number of affirmative votes, then only the last amendment to receive that number of affirmative votes shall be considered as finally adopted in the House and in the Committee of the Whole.

(b) The amendments in the nature of a substitute referred to in subsection (a) are as follows:

(1) Any amendment offered by any member (other than any amendment described in paragraph (2), (3), or (4)).

(2) An amendment offered by the ranking minority member of the Committee on the Judiciary.

(3) An amendment offered by the chairman of the Committee on the Judiciary.

(4) An amendment offered by Representative Baird of Washington.

SEC. 4. (a) After disposition of the amendments in the nature of a substitute specified in section 3(b), the Committee of the Whole shall rise. On the fourth legislative day which follows the legislative day on which the Committee rises under this section, immediately after the third daily order of business under clause 1 of rule XIV, the House shall resolve into the Committee of the Whole for further consideration of the joint resolution. After an additional period of general debate, which shall be confined to the joint resolution and shall not exceed one hour equally divided and controlled by Representative Baird of Washington and the chairman of the Committee on the Judiciary, the provisions of the joint resolution, or the provisions of the joint resolution as perfected by an amendment in the nature of a substitute finally adopted, shall be considered as an original joint resolution for the purpose of further amendment under the five-minute rule, subject to subsection (b). Each such further amendment shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the proponent and an opponent (except as provided in subsection (c)), shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

(b) No further amendment may be offered pursuant to this section except for the following, each of which (other than the amendment described in paragraph (7)) may be offered only if the Member has caused the amendment to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII:

(1) If an amendment in the nature of a substitute to the joint resolution is finally adopted (in accordance with section 3), two amendments offered by the sponsor thereof.

(2) One amendment offered by the chairman of the Committee on the Judiciary.

(3) One amendment offered by the ranking minority member of the Committee on the Judiciary.

(4) Two amendments offered by the majority leader.

(5) Two amendments offered by the minority leader.

(6) Two amendments offered by Representative Baird of Washington.

(7) The amendment referred to in subsection (c).

(c) After disposition of the amendments described in paragraphs (1) through (6) of subsection (b), it shall be in order to consider an amendment offered by the sponsor of the amendment in the nature of a substitute to the joint resolution finally adopted (in accordance with section 3) or his designee, or if no such amendment in the nature of a substitute is so adopted, an amendment offered by Representative Baird of Washington or his designee. All points of order against such amendment are waived (except those arising under clause 7 of rule XVI). The amendment shall be debatable for one hour equally divided and controlled by the proponent and an opponent.

SEC. 5. If at any time during the consideration of the joint resolution the Committee of the Whole rises and reports that it has come to no resolution on the joint resolution, then on the next legislative day (except as provided in section 4), immediately after the third daily order of business under clause 1 of rule XIV, the House shall resolve into the Committee of the Whole for further consideration of the joint resolution.

SEC. 6. At the conclusion of consideration of the joint resolution for amendment the Committee shall rise and report the joint resolution, or the joint resolution as perfected by an amendment in the nature of a substitute finally adopted, to the House with such further amendments as may have been adopted. Any Member may demand a separate vote in the House on any further amendment adopted in the Committee of the Whole to the joint resolution as perfected by an amendment in the nature of a substitute finally adopted. The previous question shall be considered as ordered on the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 7. It shall be in order to take from the Speaker's table H.J. Res. 83, with any Senate amendment thereto, and to consider in the House, without intervention of any point of order (except those arising under clause 7 of rule XVI), a motion offered by the sponsor of the amendment in the nature of a substitute to the joint resolution finally adopted (in accordance with section 3) or his designee, or if no such amendment in the nature of a substitute is so adopted, offered by Representative Baird of Washington or his designee, to dispose of any such Senate amendment. The Senate amendment and the motion shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the proponent and an opponent. The previous question shall be considered as ordered on the motion to final adoption

without intervening motion or demand for division of the question.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 210, nays 198, not voting 25, as follows:

[Roll No. 126]

YEAS—210

Aderholt	Everett	Manzullo
Akin	Feeney	McCotter
Bachus	Ferguson	McCrery
Baker	Flake	McHugh
Balenger	Foley	McInnis
Barrett (SC)	Franks (AZ)	McKeon
Bartlett (MD)	Frelinghuysen	Mica
Barton (TX)	Garrett (NJ)	Miller (MI)
Bass	Gerlach	Miller, Gary
Beauprez	Gibbons	Moran (KS)
Bereuter	Gilchrest	Murphy
Biggert	Gillmor	Musgrave
Bilirakis	Gingrey	Myrick
Bishop (UT)	Goode	Nethercutt
Blackburn	Goodlatte	Neugebauer
Blunt	Goss	Ney
Boehler	Granger	Northup
Boehner	Graves	Norwood
Bonilla	Green (WI)	Nunes
Bonner	Gutknecht	Nussle
Bono	Harris	Osborne
Boozman	Hart	Ose
Bradley (NH)	Hastings (WA)	Otter
Brady (TX)	Hayes	Oxley
Brown (SC)	Hayworth	Paul
Brown-Waite,	Hefley	Pearce
Ginny	Hensarling	Pence
Burgess	Herger	Petri
Burns	Hobson	Pickering
Burr	Hoekstra	Pitts
Burton (IN)	Hostettler	Platts
Buyer	Houghton	Porter
Calvert	Hyde	Portman
Camp	Isakson	Pryce (OH)
Cannon	Issa	Putnam
Cantor	Istook	Quinn
Capito	Jenkins	Radanovich
Castle	Johnson (CT)	Ramstad
Chabot	Johnson (IL)	Regula
Chocola	Johnson, Sam	Rehberg
Coble	Jones (NC)	Renzi
Cole	Keller	Reynolds
Collins	Kelly	Rogers (AL)
Cox	Kennedy (MN)	Rogers (KY)
Crane	King (IA)	Rogers (MI)
Crenshaw	King (NY)	Rohrabacher
Cubin	Kingston	Ros-Lehtinen
Culberson	Kirk	Royce
Cunningham	Kline	Ryan (WI)
Davis, Jo Ann	Knollenberg	Ryun (KS)
Deal (GA)	Kolbe	Saxton
DeLay	LaHood	Schrock
Diaz-Balart, L.	Latham	Sensenbrenner
Diaz-Balart, M.	LaTourette	Sessions
Doolittle	Leach	Shadegg
Dreier	Lewis (CA)	Shaw
Dunn	Lewis (KY)	Shays
Ehlers	Linder	Sherwood
Emerson	LoBiondo	Shimkus
English	Lucas (OK)	Simmons

Simpson	Thomas	Weldon (PA)
Smith (MI)	Thornberry	Weller
Smith (NJ)	Tiahrt	Whitfield
Smith (TX)	Tiberi	Wicker
Souder	Turner (OH)	Wilson (NM)
Stearns	Upton	Wilson (SC)
Sullivan	Vitter	Wolf
Sweeney	Walden (OR)	Young (AK)
Tancredo	Walsh	Young (FL)
Taylor (NC)	Wamp	
Terry	Weldon (FL)	

NAYS—198

Abercrombie	Green (TX)	Olver
Ackerman	Grijalva	Ortiz
Alexander	Gutierrez	Owens
Allen	Harman	Pallone
Andrews	Hill	Pascrell
Baca	Hinchee	Pastor
Baird	Hoeffel	Payne
Baldwin	Holden	Pelosi
Ballance	Holt	Peterson (MN)
Becerra	Honda	Pomeroy
Bell	Hoolley (OR)	Price (NC)
Berkley	Hoyer	Rahall
Berman	Inslee	Rangel
Berry	Israel	Reyes
Bishop (GA)	Jackson (IL)	Rodriguez
Bishop (NY)	Jefferson	Ross
Blumenauer	John	Rothman
Boswell	Johnson, E. B.	Roybal-Allard
Boucher	Jones (OH)	Ruppersberger
Boyd	Kanjorski	Rush
Brady (PA)	Kaptur	Ryan (OH)
Brown (OH)	Kennedy (RI)	Sabo
Brown, Corrine	Kildee	Sanchez, Linda
Capps	Kilpatrick	T.
Capuano	Kind	Sanchez, Loretta
Cardin	Kleczka	Sanders
Cardoza	Kucinich	Sandlin
Carson (IN)	Lampson	Schakowsky
Carson (OK)	Langevin	Schiff
Case	Lantos	Scott (GA)
Chandler	Larsen (WA)	Scott (VA)
Clay	Larson (CT)	Serrano
Clyburn	Lee	Sherman
Conyers	Levin	Skelton
Cooper	Lewis (GA)	Lipinski
Costello	Lipinski	Slaughter
Cramer	Lofgren	Smith (WA)
Crowley	Lowe	Snyder
Cummings	Lynch	Solis
Davis (AL)	Majette	Spratt
Davis (CA)	Maloney	Stark
Davis (FL)	Markey	Stenholm
Davis (IL)	Marshall	Strickland
Davis (TN)	Matheson	Stupak
DeFazio	Matsui	Tanner
DeGette	McCarthy (MO)	Tauscher
Delahunt	McCarthy (NY)	Taylor (MS)
DeLauro	McCollum	Thompson (CA)
Deutsch	McDermott	Thompson (MS)
Dicks	McGovern	Tierney
Dingell	McIntyre	Towns
Doggett	McNulty	Turner (TX)
Dooley (CA)	Meehan	Udall (CO)
Doyle	Meek (FL)	Udall (NM)
Emanuel	Meeks (NY)	Van Hollen
Engel	Menendez	Velázquez
Eshoo	Michaud	Vislosky
Etheridge	Miller (NC)	Waters
Evans	Miller, George	Watson
Farr	Moore	Watt
Fattah	Moran (VA)	Waxman
Filner	Murtha	Weiner
Ford	Nadler	Wexler
Frank (MA)	Napolitano	Woolsey
Frost	Neal (MA)	Wu
Gonzalez	Oberstar	Wynn
Gordon	Obey	

NOT VOTING—25

Carter	Greenwood	Millender-
Davis, Tom	Hall	McDonald
DeMint	Hastings (FL)	Miller (FL)
Duncan	Hinojosa	Mollohan
Edwards	Hulshof	Peterson (PA)
Forbes	Hunter	Pombo
Fossella	Jackson-Lee	Shuster
Galleghy	(TX)	Tauzin
Gephardt	Lucas (KY)	Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1245

Messrs. ROTHMAN, JOHN, CARSON of Oklahoma, DEUTSCH, CASE, CONYERS, MCNULTY, MARSHALL, and LIPINSKI changed their vote from "yea" to "nay."

Mr. NUSSLE changed his vote from "nay" to "yea."

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FROST. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 212, noes 197, not voting 24, as follows:

[Roll No. 127]

AYES—212

Aderholt	Foley	McKeon
Akin	Fossella	Mica
Bachus	Franks (AZ)	Miller (FL)
Baker	Frelinghuysen	Miller (MI)
Ballenger	Garrett (NJ)	Miller, Gary
Barrett (SC)	Gerlach	Moran (KS)
Bartlett (MD)	Gibbons	Murphy
Barton (TX)	Gilchrist	Musgrave
Bass	Gillmor	Myrick
Beauprez	Gingrey	Nethercutt
Bereuter	Goode	Neugebauer
Biggett	Goodlatte	Ney
Bilirakis	Goss	Northup
Bishop (UT)	Granger	Norwood
Blackburn	Graves	Nunes
Blunt	Green (WI)	Nussle
Boehrlert	Gutknecht	Osborne
Boehner	Hall	Ose
Bonilla	Harris	Otter
Bonner	Hart	Oxley
Bono	Hastings (WA)	Paul
Boozman	Hayes	Pearce
Bradley (NH)	Hayworth	Pence
Brady (TX)	Hefley	Petri
Brown (SC)	Hensarling	Pickering
Brown-Waite,	Herger	Pitts
Ginny	Hobson	Platts
Burgess	Hoekstra	Porter
Burns	Hostettler	Portman
Burr	Houghton	Pryce (OH)
Burton (IN)	Hyde	Putnam
Buyer	Isakson	Quinn
Calvert	Issa	Radanovich
Camp	Istook	Ramstad
Cantor	Jenkins	Regula
Capito	Johnson (CT)	Rehberg
Castle	Johnson (IL)	Renzi
Chabot	Johnson, Sam	Reynolds
Chocola	Jones (NC)	Rogers (AL)
Coble	Keller	Rogers (KY)
Cole	Kelly	Rogers (MI)
Collins	Kennedy (MN)	Rohrabacher
Cox	King (IA)	Ros-Lehtinen
Crane	King (NY)	Royce
Crenshaw	Kingston	Ryan (WI)
Cubin	Kirk	Ryun (KS)
Culberson	Kline	Saxton
Cunningham	Knollenberg	Schrock
Davis, Jo Ann	Kolbe	Sensenbrenner
Deal (GA)	LaHood	Sessions
DeLay	Latham	Shadegg
Diaz-Balart, L.	LaTourette	Shaw
Diaz-Balart, M.	Leach	Shays
Doolittle	Lewis (CA)	Sherwood
Dreier	Lewis (KY)	Shimkus
Dunn	Linder	Simmons
Ehlers	LoBiondo	Simpson
Emerson	Lucas (OK)	Smith (MI)
English	Manzullo	Smith (NJ)
Everett	McCotter	Smith (TX)
Feeney	McCrery	Souder
Ferguson	McHugh	Stearns
Flake	McInnis	Sullivan

Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
DeLahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez

Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hill
Hinchev
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslie
Israel
Jackson (IL)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larsen (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)

Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)

NOES—197

Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hill
Hinchev
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslie
Israel
Jackson (IL)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larsen (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)

NOT VOTING—24

Greenwood
Hastings (FL)
Hinojosa
Hulshof
Hunter
Jackson-Lee
(TX)
Lucas (KY)

Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascarell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda
T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 602 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2844.

□ 1254

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2844) to require States to hold special elections to fill vacancies in the House of Representatives not later than 21 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes, with Mr. SIMPSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Ohio (Mr. NEY) and the gentleman from Connecticut (Mr. LARSON) each will control 20 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 10 minutes.

The Chair recognizes the gentleman from Ohio (Mr. NEY).

Mr. NEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 2844, the Continuity in Representation Act of 2003. This important legislation furthers the important objective of ensuring that the House of Representatives, the people's House, continues to function effectively during times of national emergency.

Mr. Chairman, it has now been over 2 years since the horrific events of September 11, 2001, a day in which terrorist enemies of the United States murdered thousands of innocent American citizens in cold blood and struck devastating blows against symbols of our country's economic and military power. These lethal attacks served as a very painful reminder of the destructive intent of our terrorist enemies, as well as the increasingly sophisticated and devastating methods by which they carry out their deadly work.

Since that grim day, we have been forced to contemplate the dreadful possibility of a terrorist attack aimed at the heart of our Nation's government here in Washington, D.C., possibly carried out with nuclear, chemical or biological weapons of mass destruction. Such an attack could potentially annihilate substantial portions of our Federal Government and kill or maim hundreds of Members of Congress. This is not a comfortable scenario for any of us to confront, as it forces us to contemplate the possibility of our own demise at the hands of our terrorist enemies.

Nevertheless, if such an attack were ever to occur, the presence of strong

□ 1254

So the resolution was agreed to. The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE
The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised 2 minutes remain in this vote.

national leadership would be more important than ever. The American people would be desperately seeking reassurance that their government remained intact and capable of acting vigorously in the Nation's defense.

In the aftermath of a catastrophic attack, it would be imperative that a functioning Congress be in place with the ability to operate with legitimacy as soon as possible. How best to ensure the continuity of the House of Representatives in the wake of a terrorist attack is a complex and difficult question that defies a simple solution.

When drafting the Federal Constitution, our Founding Fathers designed the House to be the branch of government closest to the people. They believed the only way this objective could be accomplished was through frequent elections. Consequently, the Constitution, Article I, Section 2, Clause 4, provides that vacancies in the House may be filled only through special elections. As a result, no Member has ever served in this House who was not first elected by the people he or she represents.

Last September, the Committee on House Administration, which I chair, along with our ranking member, the gentleman from Connecticut (Mr. LARSON), and Members from both sides of the aisle, conducted a hearing on H.R. 2844 to allow leading thinkers on the issue of congressional continuity to provide insight on the many different aspects of this important issue. That hearing revealed that the debate on this subject essentially divides into two camps: Those who view a quick reconstitution of the House as the most important consideration, and, thus, support a constitutional amendment allowing for the appointment of temporary replacements to fill vacant House seats; or, the second camp, those who believe retaining the House's elected character is paramount and, therefore, support expedited special elections as the exclusive means for reconstituting the House of Representatives. The second camp I described is what this bill of the gentleman from Wisconsin (Chairman SENSENBRENNER) does.

Though the two sides in this debate disagree on many fundamental issues, both agree that expedited elections should be part of the solution to this complex and difficult question. For this reason the Committee on House Administration marked up and passed out of committee H.R. 2844, which establishes a framework for conducting expedited special elections to fill House vacancies resulting from a catastrophic terrorist attack. The goal of this legislation is to ensure the continuing operation of the House during times of national crisis, while at the same time protecting the character of the House as truly an elected body.

The Continuity in Representation Act requires that expedited special elections be held within 45 days of the Speaker of the House announcing that

more than 100 vacancies exist in the House. The political parties authorized by State law to make nominations would then have up to 10 days after the Speaker's announcement to nominate a candidate. However, a State would have to hold an expedited special election if a regularly scheduled general election were to be held within 75 days after the Speaker's announcement, thus basically providing a 30-day extension for such States.

We are under no illusion that holding expedited special elections would be challenge-free for the States. We know that. When we have regular course of order, it is a challenge, as we all know. Even under the best circumstances, conducting an election presents many logistical hurdles. Nevertheless, a number of States already require House vacancies to be filled via the special election within 45 days or less.

In addition, the majority opinion of the Nation's chief election officials, one of whom testified, appears to be that 45 days would provide sufficient time to plan and prepare for an expedited special election. Again, they did not say it would be easy, but they thought it would provide enough time.

□ 1300

Therefore, I believe H.R. 2844 strikes the proper balance between the demand to fill House vacancies through special elections in as short a time frame as possible and the need for election officials and the voting public to have the time necessary to get ready for the elections to make informed choices.

In conclusion, as Members of Congress we owe a duty to the people whom we represent to contemplate and devise response to worst case scenarios, which we all hope never happens; but we have to again be ready and be able to respond to those scenarios to ensure that no terrorist attack will ever cripple the ability of the people's House to function effectively.

I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for bringing this bill through the process. I also want to thank our ranking member, the gentleman from Connecticut (Mr. LARSON). I thought we had a very good look at the different issues in the Committee on House Administration and a very healthy debate on those issues. And I urge the support of the bill.

Mr. Chairman, also I want to thank our whip, the gentleman from Missouri (Mr. BLUNT), for his work on this issue also.

Mr. Chairman, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me begin also by thanking my distinguished colleague from Ohio. Throughout this debate and discussion, clearly when there was an opportunity where issues were non-germane because of the importance and gravity of this issue, the chairman saw

fit to make sure that this discussion was able to flow in our committee.

I further want to thank the Speaker of the House and the gentleman from Missouri (Mr. BLUNT), as well, for their intercessions and understanding of the importance and significance of this issue. And as was mentioned by the gentleman from California (Mr. DREIER), and the gentleman from Wisconsin (Mr. SENSENBRENNER) earlier as well, their willingness to bring a constitutional proposal before their committees, which I think is an important step in this process.

The continuity of Congress, as was pointed out by the distinguished chairman, apparently means different things to different people. But in reality, it comes down to one question: Can the legislative branch be fully functional in the immediate aftermath of a disaster which affects some or all of its Members? Can it "stand up" immediately in the wake of a catastrophe? For that kind of thing to take place, I turn to "Justice," or more appropriately Judge Learned Hand, whose name I think is among the great names in history. But more importantly, what Judge Learned Hand said is "The spirit of liberty is the spirit which is not too sure that it is right."

As we approach this debate today, and understanding the complexity of the issues involved, as the gentleman from North Carolina (Mr. WATT) said earlier, neither side should be claiming that it is "right," but both sides should be citing the principles that they are adhering to in trying to put them forward in the current context.

In my remarks before the Committee on Rules, I cited a couple of images that are seared in my memory, and I think the minds of most people here—the image of us all united on the steps of the Capitol immediately following the attacks on September 11, together and unified. And then also, not too long afterward, another situation that arose with respect to anthrax that moved the Speaker and then-Minority Leader GEPHARDT to convene a joint caucus. In that joint caucus we also discussed very important issues.

And at that time, because of the safety concerns around this building, our leaders argued that we had to shut down the legislative process, shut down the building for safety reasons, in what was thought to be an agreement with both the President and the other body. Appealing to our better angels, even though the Membership itself did not want to go home, we did, only to read in the papers that while the House was at home, the Senate was doing its duty. We know what the reality of that situation is.

I raise these symbolic images because of the message it sends out to the American people. And as was pointed out by the distinguished gentleman from Ohio, I think it directly points to the differences that we have with regard to this bill. And they are important distinctions.

Earlier debate on the rule highlights the fact that there are really two convergent remedies before us today. Under immediate consideration is a statutory scheme to quickly fill House vacancies in the wake of mass casualties. Like it or not, even these expedited elections, which maintain the elective character of the House, cannot satisfactorily fill the potential power vacuum created in the wake of a catastrophic event, and do not address the issue at all with respect to incapacity.

It is important because, if either the House or the Senate cannot operate, or their actions are subject to questions of legitimacy, our systems of checks and balances fails, and our democracy is in jeopardy. These questions of legitimacy were raised most notably in my research by Estes Kefauver, when he said, having nobly served in this House, that no one enters into this Chamber who has not—as the gentleman from Wisconsin (Mr. SENSENBRENNER) eloquently said—been duly elected by the people. That is a powerful and unique statement to make. But Kefauver went on to say that there is an important concern about the representative nature of this democracy—that while we are, in fact, elected by people, we are sent here by the States. And a catastrophe that could prevent whole States from not being represented for 45 days goes to the heart of my concern about the underlying bill.

So I have some questions that I pose to the House today, for our consideration as we debate this bill.

First, in the wake of a disaster, is the House able to reconstitute itself so that its actions are viewed by the American people as legitimate and representative under the Constitution? And legitimacy here is very important. Unless representatives from nearly all the 50 States are present to debate and deliberate, then the answer is “No.” Although, arguably, the House could function under parliamentary rules with as few as three Members, would the action of three Members have the legitimacy that it needs?

We all know and have heard from earlier debate that the Senate could immediately reconstitute itself. And there is a process for succession for the President. The smaller the number of Members, and the fewer the number of States represented, the greater the question of legitimacy.

Unless fully constituted with all 50 States participating, through some form of representation, there is no “representative” body for the people of various States, and House actions would lack the legitimacy of national “majority rule” under the Constitution.

Second, if immediate legislative authority is necessary to validate and support executive branch functions, and I believe it would be, or to hold them in check, will that legislative authority be there? If not, will the executive branch feel constrained to wait for a reconstituted legislative branch to

work its legislative will? In a crisis, will we be governed by the rule of law, or by the will of men?

No one I have ever talked to about this scenario believes that the executive branch will put its functions on “hold” while the House is being reconstituted. If there is a national threat, or a natural disaster, the executive branch will respond however it chooses, perhaps extralegally, because of the absence of checks and balances from a functioning legislative branch. In other countries, this type of executive branch action would be called “martial law.”

Third, is it necessary to squeeze the lifeblood out of our democracy’s electoral process in the name of expedited elections? Clearly, that is not the intent of the proponents of this bill—I understand that. But unintended consequences happen in these situations.

Presumably state-chosen representatives, could save temporarily, while awaiting permanent replacements which are the result of legitimate popular elections conducted in the 50 States under their own election processes. This bill Federalizes State election procedures in these circumstances, and its timetable, unfortunately, tramples all over essential elements of our democracy, squeezing out most States’ candidate eligibility and the selection procedures, voter registration opportunities and voter choice. It also tramples on 40 years of civil rights and voting rights laws. Is this really necessary?

Mr. Chairman, I will include for the RECORD the following letters and documents.

SECRETARY OF THE STATE,
CONNECTICUT,
Hartford, CT, December 11, 2003

Hon. JOHN B. LARSON,
Longworth HOB,
Washington, DC.

DEAR CONGRESSMAN LARSON: As the Chief Elections Official for the State of Connecticut, I am writing to express my concern over H.R. 2844 currently being debated in Congress that would require states to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances.

While Connecticut General Statutes under Section 9-215 already allows for a special election for state representatives and state senator in 45 days, a special election for a member of Congress would represent a much larger geographic and electoral population. In Connecticut, for example, a congressional seat can be 50 times the size of a state representative or a state senate district.

A 45 day special election in a Connecticut congressional district would not only be unworkable but runs counter to a fair and democratic process. Specifically, such a short time frame would not give voters the opportunity to make an informed decision about any of the candidates running for office or about the issues being discussed. In addition, a 45 day special election for Congress would not allow the opportunity for a primary. This would essentially force Connecticut back to a closed election process after the General Assembly recently opened up our democratic primary system this past legislative session.

In addition, pursuant to State and Federal law, the State of Connecticut has 45 days to issue overseas ballots. These ballots contain the names of candidates for federal office only and are available 45 days before any election where the names of candidates for federal office appear. Holding a special election for Representative in Congress 45 days after the vacancy would create a timeline too short to comply with the State and Federal laws requiring the availability of the 45 day overseas ballots.

Thank you for your consideration of my comments and I commend you on all of your hard work as you continue to debate this very important issue in Congress. Please do not hesitate to contact me or my Deputy Secretary of the State, Maria Greenslade, if you have any questions or if I can be of assistance.

Sincerely,

SUSAN BYSIEWICZ.

STATE OF WISCONSIN,
ELECTIONS BOARD,
Madison, WI, September 5, 2003.

Hon. JOHN CORNYN,
U.S. Senator, Chairman, Senate Subcommittee on the Constitution, Civil Rights and Property Rights, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR CORNYN: Thank you for the opportunity to comment regarding the proposals pending before the Subcommittee which would require special elections to be held to fill multiple congressional vacancies resulting from the a catastrophic event. I am the chief state election official for Wisconsin. I will endeavor to respond to your inquiries.

Twenty-one days would not be enough time to conduct an expedited special election in a crisis situation. Election preparation requires securing polling places, retaining poll workers, qualifying candidates, preparing ballots, delivering absentee ballots, setting up voting equipment and conducting the election. Candidate qualification requires a notice and filing process that will take at least 6 days, the current minimum under Wisconsin law. Ballot preparation, voting equipment programming and set up would take at least 1 week.

This leaves a week for absentee voting. This would effectively eviscerate the absentee voting privilege. The primary effect would be felt by military and overseas electors.

Twenty-one days would not be enough time to ensure the integrity of the democratic process. Candidate qualification would be so abbreviated that candidates would not have the time to meet qualification requirements, even if these requirements were loosened to expedite the process. In a crisis situation the focus of candidates and voters will likely be on the crisis and its daily impact. There would be no time for effectively winnowing the field through a primary, so the winner will likely have a small plurality of the vote.

Twenty-one days would effectively disenfranchise many voters. Overseas and military electors generally need 45 days of ballot transit time. Voters would have very little opportunity to learn about the qualifications of the candidates, the time of voting and location of the polling place. Voters with disability would likely have a more difficult time participating in the proposed time-frame.

Sixty-two days is the minimum time necessary to ensure proper mechanical operation of an expedited special election, consistent with democratic integrity and offering all voters the opportunity a meaningful opportunity to vote.

An expedited special election would likely cost the state of Wisconsin and local government at least \$2 million dollars in out of pocket costs for notices, ballots, postage, poll worker salary, voting equipment vendor support and supplies. The cost of state and local election officials salaries and fringe benefits would be increased for overtime and other work would be set aside for the conduct of the expedited special election.

A 21 day schedule for special elections has the potential to undermine public confidence in the election process just when this confidence would be needed most. Na expedited election process needs to be put in place, but it should not be so abbreviated that individuals elected under the process lose credibility.

If you need additional information please contact me.

KEVIN J. KENNEDY,
Executive Director.

AUGUST 22, 1961.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on House Joint Resolution 91, a resolution to amend the Constitution to authorize Governors to fill temporary vacancies in the House of Representatives.

The Constitution, as amended by article XVII, provides that the Senate of the United States "shall be composed of two Senators from each State, elected by the people thereof When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct."

However, with respect to Representatives, the Constitution provides in article I, section 2: "The House of Representatives shall be composed of members chosen every second Year by the People of the several States . . ." Section 2 also provides that "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies."

The proposed amendment to the Constitution would provide that whenever the total vacancies in the House of Representatives exceed one-half of the authorized membership, for a period of 60 days thereafter the executive authority of each State shall have the power to make temporary appointments to fill any vacancies in the representation from his State in the House of Representatives. The amendment also provides that such appointee shall serve temporarily until the vacancy has been filled by an election as provided for by article I, section 2, of the Constitution.

While the Constitution has provision for dealing with vacancies in the Senate, other than through the time-consuming election process, there is no such provision with respect to vacancies in the House. The Supreme Court in *United States v. Classic* (313 U.S. 299), made it clear that elections are required for Members of the House of Representatives. The need for this amendment, especially during a period of national emergency or disaster, is pointed up by the critical world conditions today, and the ability of some nations, through the use of atomic and hydrogen devices, to wreak mass destruction in target areas.

The committee may wish to consider whether the power to fill vacancies should be operative only when more than one-half of

the membership is vacant. It is noteworthy that similar proposals have been considered by past Congresses which provided for vacancies to be filled when the total number exceeded 145, or approximately one-third of the authorized membership.

The Department of Justice does not object to the enactment of this resolution, although it might be desirable to include a provision which would establish a procedure for officially notifying the Governors of the States, perhaps through Presidential proclamation, as to when they are authorized to make such temporary appointments.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

STATEMENT OF SENATOR ESTES KEFAUVER

Mr. Chairman, as a former member of this distinguished body where I was also a member of this particular committee, it is a real pleasure and privilege for me to have this opportunity to express to it my opinions on a subject of vital importance of the House of Representatives and the entire Nation.

I know from personal experience that the House of Representatives is properly proud of its historical role as representing the will of the people of the United States. No Member has ever entered this body except by the mandate and popular vote of his constituents. The Founding Fathers were determined that Members of the House should be responsible directly to the people. For this reason, they established a 2-year term of office and provided that vacancies should be filled in all events by special election. However, the framers of the Constitution could not foresee the stark realities of the mid-20th century when weapons of war which can wreak mass destruction almost instantaneously would come into the hands of hostile world powers.

Of course, the Senate, too, has since become a body elected by direct popular vote and although Members of the Senate are not required to submit themselves to the elective process so often, I believe that its Members are also keenly conscious of the fact that they are elected by, and are responsible to, the people.

In order that constitutional representative government may be continued in all events, I believe it is of vital importance to take precautionary steps so that some disaster could not prevent the legislative branch of our Federal Government from continuing to function in a fully representative capacity. As you know, presidential succession is assured by law. Vacancies in the judicial branch can be filled by Executive appointments. When the Constitution was amended to provide for direct election of Senators, provision was also made for temporary appointments by State governors to fill vacancies. Thus, if some nuclear disaster fell upon the Capitol, the executive and judicial branches and the Senate could be speedily reconstituted, but special elections would be required to fill vacancies in the House of Representatives. The delay in such a time could paralyze the functioning of the Federal government.

I do not say that it would necessarily be constitutionally impossible for the House of Representatives to function with but a fraction of its Members. I am informed that present parliamentary precedents indicate that the House can operate with a quorum of its living Members. But any disaster which killed one-half of one-third of the Representatives might well disable or isolate so many others that quorum of the survivors could

not be mustered. Also, if this occurred before a new Congress had organized and adopted its rules, a point of order might well be sustained that a quorum consists of a majority of all Members chosen. In any event, it would be important at such a time that the representative character of the House be preserved, and that the delegations of the people of all the States be substantially intact for the urgent legislative action which would be taken. The President should have that degree of support and national unity which only a fully constituted Congress could give him.

For this reason, I have favored for a number of years an amendment to the Constitution which would authorize the Governors of the various States to make temporary appointments to the House of Representatives whenever some disaster substantially reduced its membership. I believe such appointments should be as temporary as conditions will permit and that the appointees should serve only until successors can be elected. However, in normal times, special elections require from 60 to 90 days, and in times of national emergency and disaster it could well be much longer before elections could properly be held.

Former Senator William Knowland of California was one of the earliest to become concerned about the continuity of constitutional representative government in the event of nuclear attack. In September of 1949, it was learned that the Soviet Union had exploded an atomic bomb. In the 81st Congress, Senator Knowland then introduced Senate Joint Resolution 145 on January 18, 1950. It set the number of vacancies which would authorize temporary appointments at one-half of the authorized membership of the House and set forth a detailed provision for a proclamation to inform the State Governors that their appointive power had arisen. In the 82d Congress, Senator Knowland introduced Senate Joint Resolution 59, which reduced the operative number of vacancies to 145 and also contained notification provisions. The Senate hearings held in the 81st and 82d Congresses indicate that it was thought that a majority of the authorized membership of the House was necessary for a quorum, and this may partially explain why Senator Knowland changed the operative number of vacancies from one-half to one-third in his proposal. It was developed in the course of hearings in the 84th Congress that parliamentary precedents required for a quorum only a majority of the Members of the House who are duly chosen, sworn, and living. Neither figure, therefore, has any particular constitutional or parliamentary significance. In my opinion, the operative number of vacancies should be determined by the point at which the representative character and legislative efficiency of the House might become so impaired as to require temporary appointments.

In the 83d Congress, Senator Knowland introduced Senate Joint Resolution 39, which again specified one-third and contained proclamation provisions. This resolution was approved by the Senate by a vote of 70 to 1 on June 4, 1954.

In the 84th Congress, as chairman of the Senate Subcommittee on Constitutional Amendments, I became interested in this subject and introduced Senate Joint Resolution 8, which set the number of vacancies at one-half and did not contain a proclamation provision. I felt then and feel now that the operation of the authority granted by such an amendment should not depend upon the following of some detailed notification procedure. There are many pitfalls in attempting to deal constitutionally with all the unforeseeable difficulties which might prevent a specified mode of notification from

being carried out. This resolution was approved by the Senate by a vote of 76 to 3 on May 19, 1955. In the 85th Congress, I introduced Senate Joint Resolution 157 along the same lines. In the 86th Congress, I introduced Senate Joint Resolution 39 and it was approved by the Senate by a vote of 70 to 18 despite the fact that two additional and separate articles of amendment were added to it on the Senate floor.

From this background, I believe it is safe to say that if the House of Representatives approves a constitutional amendment on this subject, the chances are very good that the Senate will also approve it.

Early in this Congress, I introduced Senate Joint Resolution 18, which set the operative number of vacancies at one-half. From discussion in the Subcommittee on Constitutional Amendments, I have concluded that one-third is a more suitable basis than one-half, although any choice is necessarily somewhat arbitrary. In considering the possible effects of the type of disaster which we should guard against, I think it is most likely that any disaster which killed one-third of the membership of the House would incapacitate so many of the survivors that the House would probably be left with substantially less than one-half of its membership available for the transaction of business. A strong argument can be made that the operative number of vacancies should be even less. Indeed, I doubt if the average citizen is conscious of any valid reason why individual vacancies in the House and Senate are treated differently by the Constitution with respect to temporary appointments.

Senator Kenneth B. Keating, also a former Member of the House of Representatives, and I have, therefore, introduced Senate Joint Resolution 123, which specifies one-third. It also authorizes Congress to enforce the article by legislation, leaving the way open to provide statutory procedures for determining when the requisite number of vacancies exist and notifying the State Chief Executives of this fact. Of course, the House will continue to be the constitutional judge of the qualifications of its own Members, in case unforeseen difficulties arise in the exercise of this grant of authority.

I know that the Department of Justice and the Office of Civil and Defense Mobilization are very much in favor of some amendments along these lines, and I understand that representatives of these agencies will appear personally at these hearings. At a time when we are preparing ourselves militarily for the possibility of World War III and we are calling upon our citizens for personal sacrifice to the point of urging construction of personal fallout shelters, I feel very strongly that it is the height of folly to leave a constitutional gap which might prevent the continuation of orderly representative government. The time is now singularly appropriate for approval of an amendment of this sort. It would demonstrate to Mr. Khrushchev that we are preparing governmentally, as well as militarily, if the enemies of freedom chose to precipitate World War III.

Mr. Chairman, I commend you and your committee for going into this subject at this time. I am not wedded to any particular form which the amendment should take, but I believe strongly that some amendment along these lines should be approved promptly by the Congress. I know that you will give this problem full and careful consideration and I am confident that the result will be a solution which serves the interests of all the American people, protects the integrity of this great legislative body, and insures the continuation of democratic government. Thank you for your courtesy and consideration.

(The statement referred to is as follows:)

STATEMENT BY REPRESENTATIVE CHARLES E. CHAMBERLAIN

Mr. Chairman, I wish to thank the committee for this opportunity to appear in support of House Joint Resolution 508. Although I think that the purpose of and the very real need of this constitutional amendment are self-evident and require no elaborate dissertation to prove their validity, I am pleased to present to the committee the reasons which have influenced my thinking and convinced me of its merit. I make no claims with respect to the authorship of this proposal to provide for the effective operation of Congress in the event of a national emergency or disaster, but I wholeheartedly favor it because I have been concerned, for several years, about the future of representative government during a period of hostilities of the devastating proportions that can be expected should the cold war become a hot war.

Mr. Chairman, I think we have all heard talk of the extensive plans to ensure the uninterrupted functioning of the essential agencies of the executive branch in the event of a nuclear attack on Washington . . . and this is, certainly, as it should be. But the question remains as to what would happen to the legislative branch under the same situation. As things now stand, should there be such an attack in which a large segment of the membership of the House of Representatives was lost, Congress would be unable to exercise all its constitutional powers and prerogatives until elections could be held. In the meantime we would have, for all intents and purposes, government by the executive branch. In addition, should Congress not be able to function, the morale of the Nation would be dealt a serious psychological shock which would only accentuate the chaos and confusion that would follow such an attack. Clearly, while we are acting to beef up our defenses, both at home and abroad, and while we are finally beginning to pay more attention to civil defense, this is a most opportune time to focus attention on this problem of how our system of government would function in such an eventually. Clearly, it is a time to anticipate every contingency and to act accordingly.

House Joint Resolution 508 provides for an amendment to article 1, section 2, clause 4, of the Constitution, which reads, "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to file such Vacancies." The purpose of the amendment is to make it possible for the Governor of each State to fill immediately by appointment any vacancies resulting from an emergency or disaster. This would be effected when the Speaker, or in his stead some other duly empowered officer of the House, had certified to the President that over 145 vacancies existed in the membership, and when the President had then issued a proclamation permitting the Governor of each State affected to appoint new Members within 90 days. All other vacancies after this 90-day period would be filled in accordance with the customary procedures under clause 4 as it now reads.

I believe that is essential that we safeguard our form of government as well as our populations from the disorder and devastation that such an attack would precipitate. Consider if you will the possible effect if the legislative system of the leading Nation of the free world were suddenly paralyzed? In such a circumstance the very essence of representative government . . . so often unjustly attacked as being inefficient and incapable of functioning effectively in times of crisis . . . is challenged. In past years the failure of such institutions to meet the demands of the times has had a marked impact. The inability of representative govern-

ment in Germany in the 1920's and 1930's to prevent the rise of nazism should indicate to us the need for sustaining strong representative institutions. Our system of government successfully met the Nazi challenge, but today it is threatened the world over by communism . . . which attempts to justify itself under the misleadingly innocent name of democratic centralism, which makes a mockery of true representative principles. Certainly we cannot permit to exist any foreseeable situation where our response to this threat might falter.

In addition, many of the newer nations, whose peoples are not sufficiently prepared to maintain representative institutions, have resorted to various types of authoritarian government for the espoused purpose of preparing the people for democracy. The example we set in this country might well influence, that is, to encourage or discourage, the final adoption of representative government in these new nations. As the leading legislative body of the free world, we cannot afford to overlook any contingency that might possibly reflect upon our constitutional system that has served us so well and brought us to our position of leadership in the free world.

I trust that the committee will not see any partisan feelings motivating my concern in this area out of fear of powers that the present administration would assume in the event of such a national catastrophe. My feelings with respect to this problem have no relationship to the party affiliation of the President of the United States. As I have just said, my concern is more with the reputation and preservation of representative government. But we should also keep in mind that the period in American history since the Second World War has been characterized by the dramatic ascendancy of the supremacy of the executive branch in our system of separated powers. And there are many students of politics and history who view this tendency with considerable apprehension. Whatever the validity of this viewpoint, it is irrefutable that we must keep our representative institutions in constant repair, and never fail, tacitly or otherwise to defend them against all dangers, imminent and potential.

Mr. Chairman, those of us whose job it is to make the representative system work, too infrequently take time to consider the longer view and to speculate upon the probable future of our political institutions. Whatever the nature of future developments and the possible impact that such an attack might have on them, I do not believe that there can be any doubt as to the practical wisdom or this proposal. It is my understanding that the Judiciary Committee of the other Chamber is prepared to consider a similar proposal. This is encouraging. However, it seems to me that too much time has already been gambled and that we should act on this proposal immediately. . . particularly in view of the usually time consuming ratification process required. May I suggest to the committee that we never know how late the hour is . . . how close we may be to another Pearl Harbor. Naturally we hope that it will be prevented, but we should always be prepared.

Certainly as we meet our responsibilities of national security we must not overlook the Congress itself and our responsibility to insure the continuance of representative government.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 4 minutes to the gentleman from Missouri (Mr. BLUNT), our whip.

Mr. BLUNT. Mr. Chairman, I thank the chairman of the committee, the

gentleman from Ohio (Mr. NEY), for recognizing me and for the hard work that he has done on this bill.

I also want to say sitting here and listening to the gentleman from Ohio (Chairman NEY) and my friend, the gentleman from Connecticut (Mr. LARSON), talk about this bill shows the heartfelt thought that has gone into this.

This is a circumstance that we would all hope and pray that we would never have to exercise, whatever we do today or may do in the future. It is a moment that deserves some time and consideration. As we talk about lofty constitutional principles, I am reminded, though I would have to paraphrase Benjamin Franklin, who, after the Constitutional Convention said that he had had other ideas when he came to Philadelphia. And while he was not totally satisfied with the product yet, he was not sure that he would not sometime come to believe that it was not the best possible thing that could be done and should be done. That is the spirit of the debate we need to have here today.

I certainly appreciate the work the gentleman from Wisconsin (Chairman SENSENBRENNER) has done, the willingness he has to go beyond this and look at constitutional solutions as they are presented. I appreciate our friend, the gentleman from Washington (Mr. BAIRD), and his immediate approach to me back shortly after September 11 on the floor and his immediate concern for this issue.

I am more than happy to see a constitutional debate occur on an amendment at a later time. I do not know that there is an amendment out there that satisfies my concerns. In fact, I personally have become persuaded as I thought about this by the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Ohio (Mr. NEY) and others who have taken a scholarly look at this that the elected character of the House is the unique and vibrant thing about the House. And if it is at all possible to come up with a solution that maintains that character of this as the only body that the only way you can get here is to be elected, we should try to do that. But we can continue to have that discussion.

I would suggest to my good friends on the other side of this debate that even if that happened, the proposal before us today could be seen as an appropriate interim step. Even if we were to find an amendment to the Constitution that would satisfy the broad concerns and the character of the institution, to have that on the floor, to have two-thirds of the Members of both Houses supportive of it, to then go to the States and have the States ratify would take a considerable amount of time.

I hope we have a considerable amount of time before this ever matters. I, in fact, hope that the work we do here today is never tested one way or another. But if we do not have a

considerable amount of time to come up with an approach that solves the immediate problem with a solution that is clearly workable and brought to this floor in good faith that would reconstitute the body that would allow us to continue to have that greater discussion, in the interim we have at least taken a step to do what we could to see that the House was reconstituted as soon as possible.

I also hope that our friends will work with us, and the gentleman from Maryland (Mr. HOYER) and I have talked about that, this is the gentleman from Connecticut (Mr. LARSON), the gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Ohio (Mr. NEY); and I have to look at the rules and see if another interim thing in the rules themselves can be done on the issue of capacity.

It is certainly possible that we would have Members who did not vacate their seats because of death, but were not able to serve for some period of time in the kind of circumstance we are anticipating today. Is there some way, again, either as a short or a final solution, we can deal with that at some point between now and the beginning of the next Congress in terms of the rules?

□ 1315

Mr. Chairman, I am for this bill. I think it is a great step in the right direction. It may be the final step, it may be an interim step, but it is a step that this body needs to take; and I encourage our colleagues to vote for this bill.

Mr. LARSON of Connecticut. Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise today as a proud cosponsor of this legislation, and I urge my colleagues to support this very, very important bill.

This bill really reflects our willingness, I think, to think about what to do in regards to the United States House of Representatives if the unthinkable were to happen. We need to have a mechanism in place to ensure that our government remains strong, remains stable in the events of a catastrophic attack.

Article I, Section 2 of our Constitution states that when vacancies happen in the representation of any State, the executive authority thereof shall issue writs of election to fill such vacancies. Here the operative phrase is clearly "elections." And so we know that our Founding Fathers intended for any Member of the United States House to only serve after being elected. And this House, the people's House, has fulfilled that intention, and I think this legislation will continue that tradition.

Before coming to Congress, I was very honored to serve as Michigan's

secretary of state with the principal responsibility of serving as the chief elections officer. So let me direct a few of my remarks to the actual mechanics of holding an election within the framework of this legislation.

When we first proposed this bill, many of my former colleagues in the elections community expressed reservations over our original mandate for election to be held within 21 days. The bill we consider today has extended that deadline to 45 days. And the individuals who I rely on as expert within this field say that they could conduct an election certainly within that time frame.

In regards to election administration functions such as programming, testing, hiring election workers and preparing polling places, most polling places are relatively stable, so much so that in most States they are actually listed on the voter identification cards.

If tragedy required this legislation to be acted upon, we need to remember that the ballot would only contain names for a single office, which would dramatically ease printing, programming and testing. It should also be noted that since Congress has passed the Help America Vote Act, most States are embracing the election reform such as following the model in Michigan of a statewide computerized voter registration file which is constantly updated by local election clerks, motor vehicle departments as well, thereby allowing an up-to-date, clean file to be printed at any time and provide it to all the polling places.

Also, all of the States are rapidly moving toward a uniform system of voting equipment. Michigan, for example, will soon have all of our 5,300 precincts using optical scan voting equipment, which would allow for the vendor to always have a camera-ready ballot, and then all you have to do is fill in the names of the candidates for Congress and go to print.

These elections obviously would not take place in optimal conditions, but it has been my observation that elections officials will always rise to the occasion to complete the required work, especially in time of a national emergency. This legislation will ensure the integrity of the elections process. And while I recognize that there are various ideas about how we should approach the situation of mass vacancies, it is my personal belief that under no circumstances should we deviate from the direct election of Members of the people's House. Clearly it is incumbent upon us to find a solution to this issue which honors the wishes and the wisdom of our Founding Fathers that no individual will serve in this Chamber without being first elected by the people.

This legislation, under the guidance of the gentleman from Wisconsin (Mr. SENSENBRENNER), and the gentleman from California (Mr. DREIER), and the gentleman from Ohio (Mr. NEY) is a remarkable achievement and certainly deserves bipartisan support.

It has often been said that the price of freedom is being ever vigilant. The enemies of freedom will find that America is.

Mr. LARSON of Connecticut. Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I thank the gentleman for yielding me time and for his wonderful leadership on this profoundly important legislation.

I would also commend the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary, for his work on this bill, and to no lesser extent the gentleman from Washington (Mr. BAIRD), who has, I think, singularly brought this issue to the attention of our colleagues in the days immediately following September 11.

I want to rise in strong support of the Continuity in Representation Act. Thinking of that ancient text that says, Teach us to number our days aright, that we might gain a heart of wisdom. I think it is about that, as the majority whip said, it is about that in that spirit that we gather here today.

I must tell you, Mr. Chairman, this topic is not theoretical to me or my family or to anyone who was here on September 11. I stood on the Capitol lawn that morning and saw the smoke rising from the Pentagon, and scarcely 1 month later I was informed by security officials that the anthrax bacillus was on my desk, exposed to my staff and my family.

While I pray that our Nation and this Congress will never experience any similar events with greater catastrophic effect on this institution, we must prepare for the eventuality. This legislation does that. By ensuring the continuity of this Congress, we will ensure that the people's House will be available to meet the people's needs in their most troubled hour.

The House of Representatives is truly a unique facet of the American Government. It has been called the people's House. In fact, in the Federalist Papers' James Madison said that elections, as this legislation dictates, elections would be "unquestionably the only policy" by which the House can have "intimate sympathy with the people."

Madison also wrote that "the definition of the right of suffrage is very justly regarded as a fundamental article of republican government . . . to have it left open for the occasional regulation of the Congress would have been improper."

Our Founders knew it. This legislation contemplates it. We must preserve the right and the obligation to be elected to serve in the House while we prepare necessarily for that dark day that we hope and pray shall never come.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Committee on the Judiciary favorably reported H.R. 2844, but we actually had a rather narrow jurisdiction on this bill. In fact, our review was limited to the review by the three-judge panel of the announcement by the Speaker that a sufficient number of vacancies existed to trigger the special election requirements of the bill. I think that actually skirts the more fundamental question that faces us as an institution.

As we know, the Constitution, through its 17th Amendment, permits State Governors to appoint Senators to vacant seats, but there is no comparable provision for the prompt replacement of the Members of the House of Representatives. In fact, Article I, Section 2, Clause 4 of the Constitution requires the executive authority of the State in which a vacancy occurs in the House to order a special election to fill the vacancy. And the bill before us accelerates the time in which an election would be held.

The bill itself, I think, does raise some questions. We have concerns about whether the fine history of voter protection would be, in terms of the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizen Absentee Voting Act, the National Voter Registration Act of 1993, the Americans With Disabilities Act, and the Rehabilitation Act of 1973, could be fully adhered to in the time frame outlined in the bill. Further, we worry whether the preclearance requirements outlined in section 5 of the Voting Rights Act could be met in the time frame outlined in the bill before us.

However, there is a more fundamental issue, which is what happens, should this bill become law, in the 45 days between a disaster that eliminates the House of Representatives and the holding of an election. Now, I have heard and I agree with Members who have quoted our Founding Fathers with some affection about the need to have this body be the people's House. It is this body where every one of us who serves walks through this door knowing that we have been elected, selected by the voters of our respective districts. That is unique and important in our system of government. But there is another fundamental and important aspect to our system of government, and that is the necessity of checks and balances.

When we think back to 9/11 and that great tragedy that befell our country, we are well aware that action was required by the Congress in the 45 days that followed that attack on the United States. We needed to implement the War Powers Act. Only Congress can appropriate funds. And if we do not have a House of Representatives, we do not have a Congress; and if we do not have a Congress, whoever is the chief executive, when a disaster of the mag-

nitude that eliminates the House occurs, must of necessity assume dictatorial powers in contradiction of the Constitution. And I think that specter of dictatorial powers contradicting the checks and balances needs to be weighed when we consider replacing the election on a temporary, short-term basis, perhaps even just a few weeks, 45 days, so that we would have a functioning Congress in the event of a disaster.

To do that we need to have a constitutional amendment, and I am hopeful that we will be about soon, the consideration of the constitutional amendments that have been so far introduced. And, frankly, I have authored one of them. I think it is a starting point. There are others. This is a complex issue, and none of the amendments, I think, are quite ready for our approval, but they do command our attention.

I would note that the Continuity of Government Commission, which was a joint project of the American Enterprise Institute and the Brookings Institute, sort of the odd fellows of political institutes, came up with the conclusion that it was a constitutional amendment that was required to address mass vacancies in the Congress. When Jimmy Carter and Gerald Ford, Lloyd Cutler and Alan Simpson, Newt Gingrich and Tom Foley can agree on that, I am hopeful that in the end all of us will reach that same conclusion.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Without objection, the gentlewoman from California (Ms. LOFGREN) will control the time of the gentleman from Michigan (Mr. CONYERS).

There was no objection.

Mr. NEY. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from Ohio (Mr. NEY) has 3 minutes remaining. The gentleman from Connecticut (Mr. LARSON) has 11 minutes remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 10 minutes remaining. The gentlewoman from California (Ms. LOFGREN) has 5 minutes remaining.

Mr. NEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. PAUL).

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. Mr. Chairman, as a co-sponsor I am very pleased to support H.R. 2844, the Continuity in Representation Act.

H.R. 2844 provides a practical and constitutional way to ensure that the House of Representatives can continue to operate in the event that more than 100 Members are killed. H.R. 2844 thus protects the people's right to choose their Representative at a time when such a right may be most important, while ensuring continuity of the legislative branch.

The version of H.R. 2844 before Congress today was drafted with input

from the State election commissioners to make sure it sets realistic goals and will not unduly burden State governments.

Mr. Chairman, there are those who say the power of appointment is necessary in order to preserve checks and balances and prevent an abuse of executive power during a time of crisis. Of course, I agree that is a very important point to carefully guard against and protect our constitutional liberties, and that an overcentralization of power in the executive branch is one of the most serious dangers to our liberties. However, during a time of crisis, it is all the more important to have Representatives accountable to the people.

Otherwise, the citizenry has no check on the inevitable tendency of government to infringe on the people's liberties at such a time.

Supporters of amending the constitution 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.

The Framers gave Congress all the tools it needs to address problems of mass vacancies in the House without compromising this institution's primary function as a representative body. In fact, as Hamilton explains in Federalist 59, the "time, place, and manner" clause was specifically designed to address the kind of extraordinary circumstances imagined by those who support amending the Constitution. In conclusion, I urge my colleagues to support H.R. 2844, the Continuity in Representation Act, which ensures an elected Congress can continue to operate in the event of an emergency.

Mr. Chairman, I am pleased to support H.R. 2844, the Continuity in Representation Act, introduced by my distinguished colleague, House Judiciary Committee Chairman JAMES SENSENBRENNER. H.R. 2844 provides a practical and Constitutional way to ensure that the House of Representatives can continue to operate in the event that more than 100 members are killed, H.R. 2844 thus 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.

Article I Section 2 of the United States Constitution grants state governors the authority to hold special elections to fill vacancies in the House of Representatives. Article I, Section 4 of the Constitution gives Congress the authority to designate the time, place, and manner of such special elections if states should fail to act expeditiously following a national emergency. Alexander Hamilton, who played a major role in the drafting and ratification of the United States Constitution, characterized authority over federal elections as shared between the states and Congress, with neither being able to control the process entirely. H.R. 2844 exercises Congress's power to regulate the time, place, and manner of elections by requiring the holding of special elections within

45 days after the Speaker or acting Speaker declares 100 members of the House have been killed.

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. The version of H.R. 2844 before Congress today was drafted with input from state elections commissioners to make sure it sets realistic goals and will not unduly burden state governments.

I am disappointed that some of my colleagues reject the sensible approach of H.R. 2844 and instead support amending the Constitution to allow appointed members to serve in this body. Allowing appointed members to serve in "the people's house" will fundamentally alter the nature of this institution and sever the people's most direct connection with their government.

Even with the direct election of Senators, the fact that members of the House are elected every 2 years while Senators run for statewide office every 6 years means that members of the House of Representatives are still more accountable to the people than members of any other part of the federal government. Appointed members of Congress simply cannot be truly representative. James Madison and Alexander Hamilton eloquently made this point in Federalist 52: "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 during a time of crisis. 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. 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 considering reexamining 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 amending the constitution 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 in 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 through elections. During the Civil War, the neighboring State of Virginia, where today many Capitol Hill staffers reside and many members stay while Congress is in session, was actively involved in hostilities against the United States Government. Yet, Abraham Lincoln never suggested that non-elected persons serve in the House. Adopting any of the proposals to deny the people the ability to choose their own representatives would let the terrorists know that they can succeed in altering our republican institutions. I hope all my colleagues who are considering rejecting H.R. 2844 in favor of a Constitutional amendment will question the wisdom of handing terrorists a preemptive victory over republican government.

As noted above, the Framers gave Congress all the tools it needs to address problems of mass vacancies in the House without compromising this institution's primary function as a representative body. In fact, as Hamilton explains in Federalist 59, the "time, place, and manner" clause was specifically designed to address the kind of extraordinary circumstances imagined by those who support amending the Constitution. In conclusion, I urge my colleagues to support H.R. 2844, the Continuity in Representation 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. Furthermore, passage of H.R. 2844 sends a strong message to terrorists that they cannot alter our republican government.

Mr. LARSON of Connecticut. Mr. Chairman, may I inquire, we have reserved our time, but who will close and in what order?

The CHAIRMAN. The gentlewoman from California (Ms. LOFGREN) will be first, then the gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Connecticut (Mr. LARSON), and then the gentleman from Ohio (Mr. NEY).

Mr. LARSON of Connecticut. Mr. Chairman, I yield 5 minutes to the gentleman from Washington (Mr. BAIRD), who as has been pointed out by several others, has done extraordinary work on behalf of this institution and this body to bring this very important issue before us.

□ 1330

Mr. BAIRD. Mr. Chairman, I thank the gentleman from Connecticut for the time, and I thank my friends on the other side.

Let us start with where we agree. Everyone who has spoken has said that the ideal way to replace Members permanently is through elections. People have suggested that this is somehow a covert way or a slippery slope to do away with elections for Members of the House. It is not true. There will not be a single voice in the record of this discussion that argues that it is true. We all agree on that. Let us ask if we agree on some other things.

Do we agree that article I functions of the Congress should not be usurped by the executive branch? I think we should because we have sworn an oath to that Constitution; but if we do not act to ensure that there is a legislative

branch, what alternative is left but for the executive to usurp those responsibilities, and if they so choose, what vehicle and what body is left to rein them in from that usurpation?

I submitted an amendment to this very bill which was not ruled in order that would have at least had the Congress of the United States on record affirming that the executive, in time of crisis, should not usurp our authority; but it was ruled out of order. I find it frankly astonishing that my friend, the gentleman from Texas (Mr. PAUL), who is such an adamant defender of the Constitution, is apparently willing to abrogate all of our article I until we can have special elections and an unelected executive could run the entire country.

Ask yourselves, would the Framers really have let two or three people constitute a House of Representatives when they themselves adjourned? Would they really have believed that two or three survivors or no survivors should allow an executive to take this Nation into war? Ask your constituents. Go back home. Ask your constituents: If your representatives in Congress are all killed, and a Cabinet member who you never chose and do not know who they are, have no information about their background, emerges one day and says I am now the President of the United States of America, should they have 45 days *carte blanche* to take this country into war, take away your civil rights and you will have no one here to express your concerns?

This notion that we are going to somehow appoint people who are totally unresponsive to the American people boggles my mind. We have been entrusted with our constituents, with impeachment of Presidents, with taking our country into war, with levying taxes and all the other article I duties; and yet somehow we are not capable of choosing people, former statesmen, former stateswomen who would serve this Nation well in time of crisis. Somehow that escapes our capacity. To create straw men as convenient vehicles for rhetorical argument, that would leave our country without a functioning Congress, is not a service to the people who wrote this Constitution.

There are two portraits of this gentleman in this hall that I revere. First of all, Washington's presence right here because he looks over us and reminds us to take our job seriously; but in the rotunda of this building there is a portrait in which Washington is giving back his commission as Commander in Chief of the Army to a republican form of representative government. He is not saying, I won the war, now I as chief executive want to run the country. He is saying there must be a Congress that runs this country; representatives of the people must run this country.

We agree that you must have special elections, but my friends have not

made provisions for what else to do in the interim; and in the time in which there would be elections, they have created a vehicle which is laden with problems.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. BAIRD. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank my friend for yielding.

I simply would like to ask my friend, as we have been discussing this issue of a constitutional amendment, the one question that I have is that it is my sense that in this House there is not a two-thirds vote that would, in fact, allow for the process of the constitutional amendment to begin.

Mr. BAIRD. Reclaiming my time, the gentleman cannot filibuster me.

We have waited 2½ years since we watched 3,000 of our fellow citizens die, and this body has not acted. They now give us 2 hours. We have not given this body time to debate. Ask my colleagues, as I did yesterday, have they had sufficient time to study this matter of this magnitude before we vote on it. They will tell you, no, sir, I have not. They will vote party line, as we far too often do here; but they will not vote conscience because their conscience has not grappled with this. I will not yield because this matters, and we have not been given sufficient time.

Give us time for real debate, not in a committee chaired by someone who is antithetically opposed to it. Give us time in this great body because it is our entire future that is at stake, not the future of the Committee on the Judiciary or the Committee on House Administration. It is the future of this body. Give us time; give the people time for real debate.

How can my colleagues say that elected representatives are sacrosanct and then not give those elected representatives time to debate a matter that concerns the very existence of this body? That, if for no other reason, is reason enough to vote "no" on this legislation.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

"The right of suffrage is certainly one of the" most "fundamental articles of republican government, and ought not to be regulated by the legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms." That was said by James Madison on August 7, 1787, to the Constitutional Convention; and the very proposal that is offered by opponents of this bill, a constitutional amendment to allow Congress to require that vacant House seats be filled by appointment, even temporarily, was explicitly rejected by the founders as antithetical to republican government.

My committee had a hearing in 2002 on the amendment offered by the gentleman from Washington (Mr. BAIRD). There was not very much support for

it; and I imagine that when this House debates the Baird amendment, it will be voted down. It will go far short of the two-thirds necessary to propose a constitutional amendment because there are enough Members of this House that believe that the principle of having an elected House of Representatives is paramount.

I will get my colleague his vote and his debate for him with the cooperation of my friend from California, the chairman of the Committee on Rules, who is the cosponsor of my bill; but what I would like to know is those of my colleagues who criticize the Sensenbrenner-Dreier bill, what is their alternative if the constitutional amendment gets voted down? They have not stated what alternative they have, and that is why this bill is important.

On September 11, 2001, the fourth hijacked plane was headed for this building. If it had not been for the heroic actions of the passengers of United Flight 93 who forced the plane down over Pennsylvania, Congress' ability to function may have been severely disrupted. While the 17th amendment allows Governors immediately to appoint replacement Senators, currently there are no mechanisms to quickly replace House Members. However, we can act today to enact such a mechanism through the legislative process, just as the founders intended. The Continuity of Representation Act of 2004 will, unlike other proposals, preserve the people's constitutional right to elect directly their representatives.

The bill provides for the expedited special election of new Members to fill seats left vacant in extraordinary circumstances, which the bill defines as occurring when the Speaker announces that there are more than 100 vacancies in the representation from the States. Within 10 days after such an announcement, the political parties of the States with House vacancies, as provided by State law, may nominate candidates to run in a special election to be held within 45 days.

While some may argue for the adoption of a constitutional amendment allowing the appointment of replacement House Members if a terrorist attack leaves large numbers of vacancies, such an amendment would destroy the uninterrupted tradition that only Members duly and directly elected by their local constituents should serve in the House, while ignoring the current mechanism for preserving continuity in government, the founders, in their wisdom, included in the Constitution and which is the basis for this bill.

Madison used the strongest terms when stating the House must be composed of only those elected by the people. Madison wrote in the *Federalist Papers* that direct elections are "unquestionably the only policy" by which the House can have "an intimate sympathy with the people."

The House, uniquely among all branches and bodies of the entire Federal Government, is rooted in democratic principles, and those principles

must be preserved at all costs. Current Federal law allows the Presidency and the Senate to consist entirely of the unelected. Without an elected House, the entire Federal Government would be run without a single branch reflecting the popular will. Think about it. If we have an appointed House and an appointed Senate and an appointed President, our democracy will end up being run by appointed people. That is not what James Madison and the others who were in that convention envisioned ever happening.

Congress has the clear constitutional authority to enact H.R. 2844 under article I, section 4, of the Constitution, which states that "the Congress may at any time by law make or alter" State election laws. Consistent with the right to chosen representation, the founders explicitly considered Congress' power to require expedited special elections the solution to potential discontinuity in government in extraordinary situations. As Alexander Hamilton wrote in the *Federalist Papers*, the Constitution gives the Congress "a right to interpose" its special election rules on the States "whenever extraordinary circumstances might render that interposition necessary to its safety." The Supreme Court has unanimously approved such clear-cut constitutional authority.

While some take a pessimistic view of the resiliency of the electoral process following an attack on the Nation's Capitol, I have a different view.

In England during the Second World War, many members of the House of Commons were killed in battle. Our friends across the Atlantic never devolved to appointed rule, and special elections were held within 42 days after the date of death to fill the vast majority of seats left vacant, even when the Nazis were bombing England during the Blitz. I have no doubt that here today in the United States the boundless spirit of the American people will ensure that democracy prevails in the most pressing conditions. Just as the recovery of the Pentagon and the World Trade Center sites were accomplished far quicker than imagined, I have the greatest confidence in the people of this great country that State and local election authorities would expeditiously work to restore the people's House in time of emergency.

R. Doug Lewis, executive director of the Elections Center, a nonpartisan organization representing the Nation's election officials, has testified that elections administrators from combined responses nationwide feel that they can conduct an election in as few as 45 days. While others assert that it would be too burdensome for special elections to be required within 45 days of a catastrophic attack, 10 States, as the Congressional Budget Office has pointed out, already require special elections within 45 days in normal, nonemergency situations. Vacancies in the Virginia General Assembly during the session have been filled in as few as

12 days after the vacancy has occurred, and no one has complained that those elections were unfair or unrepresentative.

One does not have to look far for examples of the resiliency of the voting process and our State and local election officials' dedication to the cause of democracy. Take, for example, last year's gubernatorial recall election in California that involved 135 candidates and an election that was certified 54 days after the certificate was issued. Voters were also asked to consider two constitutional amendment propositions. The election proceeded smoothly amidst unprecedentedly high voter turnout and 10,000 fewer polling places in the State of California than normal.

While some imagine horrific scenarios regarding catastrophic attacks on the Capitol, more inspiring scenarios can be imagined that resonate more closely with the American spirit. Should such a terrible situation occur, millions of people around the country might fill schools and gymnasiums, churches and meeting halls and freely exercise, in the wake of a vigorous attack by haters of freedom and democracy, their right to directly chosen representation, a right that has served uninterrupted in the history of our country.

□ 1345

Indeed, while some argue that adopting an amendment to the Constitution authorizing appointed Members is necessary in the light of a potential terrorist attack, the very adoption of such an amendment itself would accomplish what no terrorist could ever do, namely striking a fatal blow to what otherwise has been called the people's House. H.R. 2844, on the other hand, is founded on clear, existing constitutional authority that preserves the vital, time-tested constitutional value of directly elected representation that has made this country the most successful experiment in representative government the world has ever known.

The issue here in this debate has been if there is a catastrophe whether this House should stay elected or whether we should amend the Constitution to allow successors to be appointed in some manner or another. It is vitally important that in a time of crisis, whomever enters the doors to the Chambers where the House of Representatives meet enters the door with a mandate from the people, because if an appointed representative enters this door, the mandate would come from whomever appointed them.

Pass the bill. Do the right thing.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

I think there is broad agreement in this House, more than one might know from listening to the debate, that we all value an elected House of Representatives, but we are talking about a worst-case scenario here.

The chairman mentioned what if we had appointed Senators and appointed

House Members and an appointed President. That would surely be a catastrophic event that would yield that situation where no one who was elected was left living to run the American Government. In that case I would argue it would be better to have appointed people rather than a single appointed person to run the government, because the issue really is between dictatorship and a tripartite form of government between the judiciary, the executive, and the legislative branches.

The chairman asks what is our alternative to his bill for expedited elections? And I would ask what is the alternative for the 45 days that leaves a vacancy, a void that the adoption of this bill would provide? I worry that we have not begun the work on this constitutional amendment.

I introduced a constitutional amendment in December of 2001 contemplating a worst case. It may be that that amendment needs additional work. Frankly, I think it does. But that work needs to be in a bipartisan effort in the Committee on the Judiciary and later here on the floor. I would urge we begin that as soon as possible.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Chairman, I yield 3 minutes to the gentleman from Rhode Island (Mr. LANGEVIN), who has also been in the forefront of this issue, and I thank him for his comments.

Mr. LANGEVIN. Mr. Chairman, I thank the gentleman for yielding me this time and for his fine work on this important legislation.

Mr. Chairman, I rise in opposition to this legislation and am disappointed that we are not able to discuss the matter of continuity in the thoughtful, thorough, and nonpartisan manner it deserves. Many of my colleagues, including the gentleman from Washington (Mr. BAIRD), the gentleman from California (Mr. COX), the gentleman from Texas (Mr. FROST), the gentleman from Ohio (Mr. NEY), and the gentleman from Connecticut (Mr. LARSON), have tried to encourage dialogue on this matter, but this bill does not address many of the concerns raised by Members of this House and outside experts during the last 2½ years.

Under H.R. 2844, if the House experienced the deaths of more than 100 Members, the Speaker could direct States to conduct special elections within 45 days. Well, as a former secretary of state, I know how to run elections, and the 45-day time frame in this bill would severely limit election officials' ability to prepare ballots, train poll workers, select polling locations, and inform the voting public about the process. The short time frame would also disenfranchise our military and citizens living abroad, as well as certain elderly and disabled citizens who would not be able to apply for, receive,

and return their absentee ballots by mail. All of these things and many more would clearly undermine the process and the outcome of such a special election.

Now, while 45 days is not enough time to conduct special elections, it is certainly too long for Congress to remain inactive. In the 6 weeks after the attacks of September 11, Congress passed legislation authorizing the use of military force, an airline assistance measure, an economic stimulus bill, the Defense Authorization Act, numerous appropriation bills, the farm bill, and legislation pertaining to bioterrorism, victims assistance, and going after terrorism financing. H.R. 2844 would leave important decisions to a greatly diminished and possibly an unrepresentative House. In the case of widespread incapacitation, the House would be unable to achieve a quorum and become inoperative during a time of crisis.

I am disappointed that H.R. 2844 does not address these important issues and ignores a priority of mine, deciding how Congress could communicate and function if terrorist acts prevented it from meeting in one location. These matters warrant greater discussion than the limited bill before us, and the gentleman from Washington (Mr. BAIRD) has introduced a discharge petition for a full and fair debate on continuity, which I have signed.

Mr. Chairman, I urge my colleagues to vote against H.R. 2844 and to sign the Baird discharge petition.

Mr. NEY. Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

There has been a lot of serious discussion here on the floor today, and I think some wonderful things have been said, but a few things that have come to my mind in listening to them. Certainly Madison's wonderful discussion about the elected nature of this body is important to all of us, but also we must recall those words were said at a time when the United States Senate was totally appointed.

Now, of course, the Senate is elected, but not a one of us would argue, I think, that Senator MURKOWSKI is not a real Senator. She is. And just as would the temporary House Members be, if the worst-case disaster came and all the House Members were killed, if we had temporaries until an accelerated election system allowed for replacement by elected people.

I worried on September 11 that if the terrorists really understood our system of government, they would know that the easiest way to turn the American democracy into a dictatorship would be to kill the Members of the House, because that is our weak link in terms of our American democracy. I think if we can provide for the continuity of the legislative branch of government, we will do a wonderful thing for our country, because we will preserve the American democracy, and we will do some-

thing else: We will make the legislative branch safer from attack. If terrorists cannot destroy the American democracy by killing the Members of the House, it is a lot more less attractive to kill the Members of the House.

I would like to say something else. We have talked about the dictatorship that would be necessary if Congress could not function. There is another aspect, which is the element of the confidence of the people in the legislative branch. For example, and I mentioned this at the Committee on Rules hearing last night, how would the American people feel if the terrorists went out to the Republican Conference retreat and they killed all the Republican Members, and only the House Democrats were left? Would that feel comfortable for the country as a whole, for a country that is almost evenly divided in terms of party representation? I think not.

What if all the Members on the east coast were killed, and only the west coast Members survived to run the country? Would that really lead to confidence on the part of the American people?

We need to make sure that this branch of government survives on a temporary basis while these accelerated elections can be held. I personally think that the 45 days may be a bit too aggressive. I know my own State of California has suggested a slightly longer time frame to actually hold an election that will work. And I know that there will be an amendment offered to extend the amount of time by a small amount that hopefully might gain some favor from Members on both sides of the aisle. But I do think whatever we do with the accelerated election bill before us today, we will have let down our country if we do not address the constitutional issues required to really save the American democracy from the worst case that the terrorists might throw out.

Mr. Chairman, I yield back the balance of my time.

Mr. NEY. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Chairman, I thank the gentleman for yielding me this time.

Following the horrific attacks on September 11, it became evident that Congress had to act in case there was a catastrophic event that literally jeopardized the ongoing government. We handled this in many different ways. There was a working group. We held a hearing in my subcommittee, the Subcommittee on the Constitution, should we go the constitutional amendment route or statute. I became convinced the statute was the best way to go to ensure directly elected representatives in this body.

I would urge my colleagues to continue to make this the people's House, where we are all elected by the people, and nobody is appointed by Governors or anybody else.

Mr. LARSON of Connecticut. Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I appreciate the chairman's yielding me this time.

I support the Continuity In Representation Act of 2004. This legislation preserves the right of the people of the United States to elect their own representatives, even after a deadly attack. One of the cornerstones of our Constitution is the right of the people to govern themselves through elected representation. This right should be upheld and, in fact, continued.

H.R. 2844 provides for the expedited special election of new Members of Congress if more than 100 seats are vacant. This is designed to address a situation in which our country is attacked and significant numbers of Members of Congress are killed.

Mr. Chairman, in the wake of such an attack on our country, Americans need to be assured that their government is legitimate, and citizens need to feel that actions undertaken by Congress at a time of disaster or war are also legitimate. By allowing for the election of Representatives rather than for their appointment, Americans can be reassured that our government is continuing to function in a truly representative fashion.

Mr. Chairman, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for moving legislation that guarantees our government would survive. It has been over 2 years since September 11. This issue must be addressed today in a democratic fashion.

Mr. LARSON of Connecticut. Mr. Chairman, I yield for the purpose of a unanimous consent request to the gentleman from Michigan (Mr. CONYERS).

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, Congressional succession is one of the most timely—yet challenging—issues facing this body. In order to successfully resolve this issue, we must craft a solution that will ensure that the legislative branch of government remains fully functional; while also guaranteeing that the will of the people is constantly reflected. Along the way, of course, we must also guarantee that all of the civil rights laws—currently on the books—remain unaffected.

I initially agreed to serve as an original co-sponsor of the legislation before us because I generally believe that we should avoid amending the Constitution, when a statutory response is available. Such an approach is quicker, more likely to be passed into law, and avoids amending our most sacred national charter. While recognizing that this bill is far from perfect, I considered it to be a good first step—something we could build upon in a bipartisan way.

Unfortunately, several serious concerns remain unaddressed. For example, it has been suggested that the 45 day time-frame may be

insufficient to conduct expedited elections, and lead to the disenfranchisement of many of our men and women in the armed services. It also has been brought to my attention that the bill contains several unfunded mandates and is completely silent on the issue of Member disability or incapacity.

However, the aspect of the bill that I am most deeply troubled by relates to its possible impact on our civil rights laws—laws that I have fought long and hard to protect throughout the tenure of my career. Namely, the impact that the legislation would have on the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act of 1993, the American with Disabilities Act of 1990, and the Rehabilitation Act of 1973—just to name a few.

The expedited timeframe that some seek to establish in this bill could substantially undermine the pre-clearance requirements outlined in Section 5 of the Voting Rights Act. Needless to say, this is an extreme provision of the Act. It remains a bedrock principle of the law.

The current bill before us could also lead to the disenfranchisement of countless handicapped and elderly voters—if due to the expedited timeframe—election authorities are forced to use polling places that are not wheelchair accessible. Or, if individuals with disabilities failed to receive the required 30 day notice with respect to polling place information—as required under the ADA.

To address these obvious deficiencies, Ranking Member LARSON of the House Administration committee submitted an amendment to the Rules committee that would have made clear that nothing within this bill would be construed to affect the application of the numerous civil rights and voting laws I just mentioned. It is worth pointing out that similar language was included in the Help America Vote Act, recently passed by this body. Unfortunately, it was the wisdom of some to object to making that amendment in order.

It was my sincere hope that we could have worked together today on a bipartisan basis to reach agreement on these difficult issues. This should not have been an issue that necessitated a partisan debate.

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself the balance of my time.

Let me say, Mr. Chairman, how much I have appreciated the debate this afternoon on this important issue. I want to go back, because of the focus of this debate, to comments made by Estes Kefauver. This is not an issue that is new to this Chamber. It has been raised in the past, and I think Kefauver cuts to the core of this issue.

He said, "I do not say that it would be necessarily impossible for the House of Representatives to function with but a fraction of its Members. I am informed that present parliamentary precedents indicate that the House can operate with a quorum of its living Members. But any disaster which killed one-half or one-third of the Representatives might well disable or isolate so many others that a quorum of survivors could not be mustered.

"Also, if this occurred before a new Congress had organized and adopted its

rules, a point of order might well be sustained that a quorum consists of a majority of all Members chosen. In any event, it would be important at such time that the representative character of the House be preserved. And that the delegations of the people of all States be substantially intact for the urgent legislative action which could be taken."

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The representative character of the House is equally as constitutionally compelling as is being duly elected here, because as so often quoted today, the Connecticut Compromise focused on the representation of States, and if a disaster did occur, I cannot imagine a body or this democracy would be able to proceed in a legitimate fashion with the potential of States, many States, not even being represented.

Kefauver went on to say the President should have the degree of support and national unity which only a fully constituted Congress can give him. Think back to those images I talked about earlier and how important it was as a symbol for this country. I think that cuts to the heart of how strongly people feel about this issue.

Mr. Chamberlain of Michigan shared a similar concern. His concern was that this body, its representative nature, without being legitimate, could force us into a situation that would not be reflective of this great institution and this great body.

Mr. NEY. Mr. Chairman, I yield myself such time as I may consume.

I thank the gentleman from California (Mr. COX) and the gentleman from Texas (Mr. FROST) for the commission they headed up. But most of all, I want to thank the Speaker of the House, the gentleman from Illinois (Mr. HASTERT), who cares about the institution and helped with this piece of legislation.

This legislation falls in line with what we have always done in the entire history of our country, which is to elect Members. It is a good bill. Also, let us have some faith in the American people. If a crisis happens, which we hope it does not, the American people are resilient. The American people will continue with their democracy and will exercise the purest form of democracy, which is to vote. I support the bill.

Mr. COLLINS. Mr. Chairman, today, this House passed important legislation that will help ensure elected representation in the House of Representatives in the event that there is a tragic and catastrophic loss of life amongst the membership of this body. It is important that, should such a tragedy occur, that the people's House remain a body of elected officials, and H.R. 2844 would protect this character of the House of Representatives. H.R. 2844 would ensure that, in the event of a national tragedy and an extraordinary loss of life in this House, our government would continue to operate in a timely and effective manner that upholds the rights and ideals afforded to every American in our Constitution.

Had I not had a previous commitment in my home State of Georgia, I would have voted

"no" on rollcall Vote No. 129, a vote on amendment No. 2 offered by Mr. LARSON of Connecticut to H.R. 2844; and I would have voted "yea" on rollcall Vote No. 130, a vote on passage for H.R. 2844, the Continuity in Representation Act of 2004.

Ms. JACKSON-LEE of Texas. Mr. Chairman, the committee on the Judiciary took this bill up in a markup in January of this year, and I expressed my reservations with its provisions as drafted on the Committee record. This bill has major flaws that require the attention of Members of both sides of the aisle. Since one of the pillars of our government is the principle of due process as set forth in the 5th and 14th Amendments to the U.S. Constitution, it is critical that a piece of legislation such as this that deals with the mechanics of electing leaders in emergency situations be crafted with full respect for those principles. The 45-day deadline for State special elections set forth in this bill, as drafted, will not alleviate the fact that States won't have sufficient time to hold primary elections. Furthermore, such a short amount of preparation time could arguably favor candidates who are wealthy or well-backed because only these candidates would have the resources and ability to prepare such a quick election campaign.

Therefore, I have proposed amendments that are geared toward the maintenance of our due process guarantees with respect to the emergency special election process that would be triggered under this Act.

The first portion of this amendment, JACKSO.173, reads as follows:

In section 26(b)(4)(C)(i) of the Revised Statutes of the United States, as proposed to be added by the bill, strike "2 days" and insert "7 days."

This change would amend the section of the bill that deals with the time in which a person(s) may file a lawsuit arising out of the Speaker of the House's announcement of vacancies in the House of Representatives in excess of 100. This change would amend paragraph (4), subparagraph (B)(i) and expand the ability of an aggrieved party to file suit for either declaratory or injunctive relief from just two (2) days to seven (7) days.

Because not every State has a Capital Beltway or even a superhighway system, and because information travels at a different rate in every location, it is important that we establish a fair standard for a filing rule that affects every State in the country. The principle of procedural due process dictates that every citizen be given a realistic opportunity to obtain legal relief through our Judicial Branch.

The second portion of this proposal speaks even more to the issue of due process for all citizens. Its text reads as follows:

In section 26(b)(4)(C)(iii) of the Revised Statutes of the United States, as proposed to be added by the bill, insert after "the action" the following: "(taking into account an opportunity for an expedited appeal of the initial decision)."

Because the 45-day deadline for special State elections already places significant constraints on the electoral process and on the citizens represented due to its brevity, taking away the right to an appeal from the U.S. District Court would excessively curtail the procedural due process rights enjoyed by citizens. Given that the time in which a Federal judge has to compose an order disposing of these matters is provided in this bill, an equally expeditious appeals process should be provided

so as to maintain consistency with the U.S. Constitution and the commitment to both the 5th and 14th Amendments.

Thirdly, the amendment reads as follows:

In section 26(b)(4)(C)(iv) of the Revised Statutes of the United States, as proposed to be added by the bill, insert after "vacant" the following: "any citizen of the district and any political party of the State."

This proposal is very important to protect the interests of all citizens in the various congressional districts in the midst of party politics. As the bill is drafted, Section 2, paragraph (4), subparagraph (iv) would confer the right to sue in the event of a vacancy announcement by the Speaker of the House solely to the "executive authority," in Houston's case, the Governor. Such very limited language almost certainly threatens to deprive the citizens of a right that they should enjoy in the event that the Governor chooses not to participate in a suit for declaratory or injunctive relief pursuant to a vacancy announcement made by the Speaker of the House. In order to protect the rights of every person who truly has an interest in a call for a special election under this Act, this provision must be amended to allow citizens and political party representatives to sue for relief.

As legislators charged with the duty to uphold the U.S. Constitution, the principles of democracy call for an expansion of the rights of citizens rather than a diminution. H.R. 2844, as drafted, totally leaves the citizens and constituents out of the democratic process. Our colleagues on the other side of the aisle have fervently argued that this bill gives the people their constitutional right to participate in the electoral process. However, the truth of the matter is that our colleagues' arguments are misguided and serve to avert the "meat and potatoes" of the bill. Key to the operant provisions of H.R. 2844 is the ability to file suit with respect to the announcement of a vacancy or vacancies in the House to the extent that no quorum exists in addition to the provision of time in which to file such an action. As drafted, the bill not only provides an unrealistic period in which to file an action and it gives standing to do so exclusively to the Governor of a State. This is not democratic. This is not truly representative. Because this legislation fails to do what it purports to do, I cannot support it.

I urge my colleagues to join me in opposing H.R. 2844.

Mr. UDALL of Colorado. Mr. Chairman, I have concerns and reservations about this bill—but I will vote for it.

I will vote for it because I think we need to recognize and respond to the risk that a terrorist attack or some similar event might kill or disable enough of our colleagues that it would be impossible for the House of Representatives to play its vital role in our constitutional government. And this bill does take a first step in addressing this problem.

However, I think it would have been better for the House to have had more time to fully debate the measure, and that it should have been taken up under a less-restrictive procedure that would have allowed consideration of more amendments.

Elections are central to our political system. They are essential to assure that our government is based on the will and the preferences of the American people. But the conduct of elections can be as difficult as it is important—

ask any State official with responsibility in this area. So, we need to proceed carefully and thoughtfully when we legislate on this subject—more carefully and with more opportunity for considering revisions than was permitted under the procedures established by the Republican leadership for today's debate.

As that debate made clear, some of our colleagues—including some for whom I have the highest respect—think it would be better to go further than this bill, or any simple statutory change, can go. They would prefer to address the problem through a constitutional amendment.

While I am very reluctant to consider changing the Constitution, I do think that on this subject, the possibility of a constitutional amendment should not be ruled out. However, in the meantime I think we need to do what can be done short of such a fundamental change. That is what this bill does, and that is why I will vote for it.

Mr. DINGELL. Mr. Chairman, I rise in opposition to the legislation before us today. The loss of a large number of Members of the House of Representatives is an important institutional issue to which we should devote a substantial amount of consideration. This issue deserves an open rule to allow every Member time to express his or her opinion and offer their ideas. It is outrageous that we are only being offered one choice to decide how the entire House of Representatives will be governed in a time of national crisis. Should tragedy strike the House, this legislation could give unprecedented power to the executive branch or a few Members of Congress who were elected by just a small sliver of the country. We have not had adequate time to review this legislation, nor have we been allowed to bring sufficient amendments to the floor for debate. Once again, we are considering legislation without ample debate time and without alternatives. I oppose this bill and encourage my colleagues to do the same.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the order of the House of today, the amendment in the nature of a substitute recommended by the Committee on the Judiciary printed in the bill shall be considered as an original bill for the purpose of amendment and, pursuant to the rule, shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2844

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Continuity in Representation Act of 2004".

SEC. 2. REQUIRING SPECIAL ELECTIONS TO BE HELD TO FILL VACANCIES IN HOUSE IN EXTRAORDINARY CIRCUMSTANCES.

Section 26 of the Revised Statutes of the United States (2 U.S.C. 8) is amended—

(1) by striking "The time" and inserting "(a) IN GENERAL.—Except as provided in subsection (b), the time"; and

(2) by adding at the end the following new subsection:

"(b) SPECIAL RULES IN EXTRAORDINARY CIRCUMSTANCES.—

"(1) IN GENERAL.—In extraordinary circumstances, the executive authority of any

State in which a vacancy exists in its representation in the House of Representatives shall issue a writ of election to fill such vacancy by special election.

"(2) TIMING OF SPECIAL ELECTION.—A special election held under this subsection to fill a vacancy shall take place not later than 45 days after the Speaker of the House of Representatives announces that the vacancy exists, unless a regularly scheduled general election for the office involved is to be held at any time during the 75-day period which begins on the date of the announcement of the vacancy.

"(3) NOMINATIONS BY PARTIES.—If a special election is to be held under this subsection, not later than 10 days after the Speaker announces that the vacancy exists, the political parties of the State that are authorized to nominate candidates by State law may each nominate one candidate to run in the election.

"(4) EXTRAORDINARY CIRCUMSTANCES.—

"(A) IN GENERAL.—In this subsection, 'extraordinary circumstances' occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.

"(B) JUDICIAL REVIEW.—If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:

"(i) Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

"(ii) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives.

"(iii) A final decision in the action shall be made within 3 days of the filing of such action and shall not be reviewable.

"(iv) The executive authority of the State that contains the district of the Member of the House of Representatives whose seat has been announced to be vacant shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the announcement of such vacancy.

"(5) DEADLINE FOR TRANSMITTAL OF ABSENTEE BALLOTS FOR ABSENT MILITARY AND OVERSEAS VOTERS.—In conducting a special election held under this subsection to fill a vacancy in its representation, the State shall ensure to the greatest extent practicable (including through the use of electronic means) that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act) not later than 15 days after the Speaker of the House of Representatives announces that the vacancy exists."

The CHAIRMAN. No amendment to the committee amendment in the nature of a substitute is in order except the amendments printed in part B of the report and the amendment designated in the previous order of the House. Each amendment may be offered only by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and opponent of the amendment, shall not be subject to amendment and shall not be

subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in part B of House Report 108-466.

AMENDMENT NO. 1 OFFERED BY MR. LARSON OF CONNECTICUT

Mr. LARSON of Connecticut. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. LARSON of Connecticut:

In section 26(b)(2) of the Revised Statutes of the United States, as proposed to be added by the bill, strike "45 days" and insert "75 days".

The CHAIRMAN. Pursuant to House Resolution 602, the gentleman from Connecticut (Mr. LARSON) and the gentleman from Ohio (Mr. NEY) each will control 10 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. LARSON).

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the two amendments I have been restricted to offering today during this truncated debate will attempt to restore to the bill some of the elements which the American people associate with true democracy and legitimate elections, elections which allow the public to make a reasoned choice from among candidates who have had a fair chance to present themselves and to conduct campaigns, and elections which allow the American people to feel secure that their officials are representative of the diversity of their views.

That is, after all, the essence of our democracy. That is what this arbitrarily crafted legislation would strip away from all of us at a time when the stability of our political system will be under more stress than at any point since the Civil War.

One basic element of elections is the time required by our political system to conduct them. Supporters of expedited special elections, or in the case of this bill would be better called "rushed" special elections, would no doubt say that time is of the essence in replacing deceased Members of the House, and I agree. But the essence of democracy is choice, and the practices to facilitate that choice.

Meaningful democratic elections provide time for candidates to choose to run, time for political parties to choose among them through primaries and other methods, time for minor parties and independent candidates to qualify for the ballot, time for voters to register to vote, time to secure polling places, time to train poll workers, print ballots and mail out and receive back absentee ballots.

My first amendment today addresses the bill's short overall time frame. It would increase the maximum time allowed to conduct special elections to 75 days, up from 45 days. There is nothing

in this amendment which prevents any State from holding expedited special elections in a shorter time should they wish to do so and should they be capable of doing so. H.R. 2844, as introduced, contained a 21-day deadline for the conduct of special elections, which could not possibly have worked, but which demonstrated, in my view, the urgency to "stand up" a democracy that has been debated previously on the bill.

The amended version approved by the Committee on House Administration at the behest of the gentleman from Wisconsin (Mr. SENSENBRENNER) specified 45 days. This number is, I believe, too low, although a number of State laws provide for special elections within such a time frame. But most States, including my own State of Connecticut, as well as the State of Wisconsin, do not.

Conducting elections is difficult. It is time-consuming work, and it must be done correctly or the rights of the people will be violated, and the legitimacy of election winners will be questioned.

This amendment would alleviate a number of serious problems in the bill, better maintain the stability of our political process, and enhance the role of States in making decisions about the process they value most in conducting truncated special elections.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. DELAY), our distinguished majority leader.

Mr. DELAY. Mr. Chairman, I thank the gentleman and both chairmen for bringing this important piece of legislation to the floor. I rise in opposition to the amendment. It seems 75 days may be necessary to run a special election, but our experience in Texas is we can run a special election in less than 30 days. Ours is 36 days. I guarantee Members, when people get fired up to do an election, they can do it quite quickly, particularly with everybody interested in winning that election. I think 75 days is way too long to allow this body to sit and wait for something to happen.

I want to talk now about something even more fundamental. I carry the Constitution around with me in my pocket in order to constantly remind myself when I get dressed in the morning there still is a Constitution in this country. I know some, particularly those on the other side of the aisle, call this a living document, it does not mean a whole lot, and they are willing to change it and not even consider the unintended consequences or consider why the genius of our Founding Fathers understood what it took to build a democracy and what it took to maintain a democracy.

That is why we have checks and balances. That is why we do not place all of the power into one person or even one branch. It is vitally important for this body to be elected, and there is a

reason for that. The reason is this is the people's House. We have to be elected in order to reflect the will of the people at the moment.

The other body is set up in our Constitution to slow us down, but we are set up to reflect the will of the people at the moment. We cannot do that if we put all of the power, particularly after a catastrophe, in the hands of one or two people to make the appointments. The appointees, the people who would come here to serve, would have no allegiance to the American people. They would not care about what the American people did because they were not elected by the American people. They were appointed by some big power broker back in their State or in their district, or even in their local counties. That is not the way to continue this democracy.

We cannot have a democracy if we have a body sitting here in judgment of what is good for this country by appointed people. I heard a Member from the other side of the aisle earlier say, well, we changed the Constitution in 1913, and we now elect Senators. I am willing to have a debate that electing Senators by popular vote has had a very real negative impact on this country.

I am prepared to say why in the world would anybody want to take away the will of the people to have their own House, the United States House of Representatives, by election and not by some power-broker-type appointment.

I am opposed to those who have suggested that we ought to appoint our successors. That is the worst thing we could do is for us to announce, once we get elected, who is going to succeed us. That would create all kinds of havoc. Who is the leader in the congressional district, the elected Member of Congress or the heir-apparent appointed by that Member of Congress?

It is important in order for the continuity of this government and the continuity of freedom in this country to understand the genius of our Founding Fathers and the genius that put it together and not change it and not change the way this country works. We have to pass this bill. We have to elect this House. This is the people's House.

Mr. LARSON of Connecticut. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Chairman, I would like to ask the distinguished gentleman from Texas (Mr. DELAY), as the majority leader of this body, if the other party were in power and this body were eliminated, would the gentleman be perfectly comfortable, under his constitutional fealty, in letting the executive branch rule this country, take this country into war, and do all of the other things reserved under that Constitution with no checks and balances?

Again, it is a false straw man to say that anybody here wants to do away with elections. The issue is do we do

away with the entire Congress temporarily until we can hold elections? We need those checks and balances. And they are not the only ones standing up for this Constitution who are opposing the alternatives of temporary appointments. We, too, are standing up for it. We are standing up for checks and balances, separation of powers, and all of the Article I provisions that are ensured in the Constitution.

Mr. NEY. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, the amendment that is offered by the gentleman from Connecticut (Mr. LARSON) cuts directly against every argument he has made up to now.

What the gentleman's amendment does is delay for another 30 days the right of the people to elect their own replacement Representatives. We either can reconstitute the House quickly or reconstitute the House slowly, and this amendment makes it happen slower.

The gentleman also brings up the issue that in Wisconsin we need 62 days. We have primary elections and special elections in Wisconsin. This bill says there should be no primary elections, and that cuts it down to 34 days. So Wisconsin runs a primary election 34 days after the vacancy occurs. We would have no problem replacing me or any of my colleagues from Wisconsin within the 45-day period of time.

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself such time as I may consume.

Throughout history States have often been the engines of political diversity and experimentation. The reason I chose the 75-day time frame was to allow more of those elements to be sustained. The 45-day time frame is far shorter than the special election time frames in a majority of States. The Commission on the Continuity of Government, the Brookings Institution and the American Enterprise Institute, estimate that the average length of vacancies over the last nine Congresses has been more than 120 days. A 75-day time frame thus provides a process significantly faster than the norm in many instances, while avoiding some of the more jarring effects of the bill's far more drastic limitation.

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That was the rationale in crafting this legislation. That was the rationale where others have suggested 60, or even 90, days. I felt 75 days guaranteed the cherished rights that we all seek to protect under any proposal. The 75-day proposal, I will admit, is arbitrary, like the 21-day, or the 45-day period selected previously by the sponsors, but the entire bill is constructed around arbitrary numbers which we are only permitted to amend in a limited way.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. LARSON of Connecticut. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank my friend for yielding.

Let me state that there is absolutely nothing whatsoever that is arbitrary about the 45-day period. The State of New York has a maximum of 40 days, and we know that it has worked very well in the State of New York. And I think it is also important to note that there are three former Secretaries of State, I know at least on our side of the aisle, who serve here; and we fashioned this legislation in consultation with Secretaries of State in seeking the amount of time that would, in fact, address the concern that the gentleman from Washington (Mr. BAIRD) has raised that we as quickly as possible make sure that this institution is reconstituted. So I think it is important just to note that we have not been arbitrary in the selection of this 45 days. A lot of research went into this.

Mr. LARSON of Connecticut. Mr. Chairman, reclaiming my time, there is no doubt in my mind of the great effort and the intellect and the able people that they have put behind this. The CBO reports that more than 40 States are going to have a problem with this mandate, and will be forced to go well beyond their means. In hearing from my own State of Connecticut—from my Secretary of State—about all the underlying concerns that are raised, especially as it relates to voting rights acts, she said she would not feel comfortable unless there was a 60-day period.

Can it be accomplished in 45 days? Perhaps. But as I indicated earlier, as Judge Learned Hand said, this is a question that leaves us "not too sure that we are right," and with all due respect, I would rather err on the side of making sure that people were guaranteed those rights.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. LARSON of Connecticut. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I briefly mentioned during the debate on the rule what happened out in California. We know that each congressional district has about 650,000, fewer than 650,000 people. We might have two or three candidates in those races. In California, we had 125 candidates and we had a total of 55 days; and the prediction of doom, I was frankly suspicious about the prospect of seeing us put together in a 55-day period with 35 million Californians this special election when in fact we found that we were able to do it in that period of time for a State of 35 million people. I think in the congressional districts that are a fraction of that size, 45 days is a reasonable period.

I thank my friend for yielding.

Mr. LARSON of Connecticut. Mr. Chairman, reclaiming my time, I just wanted to close by saying that this has been an extraordinary afternoon, and I deeply appreciate the hard work and effort that has gone into this proposal on all sides. I simply disagree in principle

with terms of the bill itself, notwithstanding my own position on the need for a constitutional amendment; but I do not think the bill before us gets the job done, and I think it imperils the very democratic processes that we all cherish so much, that allows a person to walk in here as a duly elected representative of his constituents.

Mr. Chairman, I yield back the balance of my time.

Mr. NEY. Mr. Chairman, I yield myself such time as I may consume.

I just want to weigh in with a couple of comments. I think probably enough has been said about this issue, but I wanted to dovetail on some of the comments made by the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules, who put a lot of time and effort and testified at the Committee on House Administration on this issue.

An election conducted within the 45-day time frame, I would be the first to admit, and I said it earlier, would undoubtedly present challenges and would present some difficulties for State and local election officials more so than would an election conducted under certain normal circumstances; and in a perfect world we would like to provide as much time as necessary for election officials to prepare for an election and the electorate to make informed choices about candidates. Election officials all over this country on both side of the aisle work very hard. I think all of us have viewed on election day the activities of these officials. They are hard workers, and I believe that under a crisis situation they will step up, they will perform, but again, I state, in a crisis situation.

In the unique situation where large numbers of House Members have been killed in a terrorist attack, the desire for extensive election preparation time has to be weighed, has to be weighed against the urgent need to fill House vacancies with elected Members as quickly as is reasonable under the circumstances.

Doug Lewis, executive director of the Election Center, a national nonprofit organization serving the elections and voter registration profession, testified before the Committee on House Administration last year that the majority of our country's chief election officials believe that 45 days would provide sufficient time to plan and prepare for an expedited special election. And I believe that Doug Lewis had done a polling throughout his organization, and I should tell the Members that Doug Lewis and his organization have credibility. They are on the forefront of the Help America Vote Act, and they work and represent the people who are right in the trenches that deal with this every single election period. At present there are 10 States, including Minnesota, Texas, New York, and Georgia that require the filling of House vacancies within 45 days. Thus I believe if they can do it, we can do it nationally; and I believe 45 days is a reasonable

time frame for conducting a fair, open, and meaningful election.

So for these reasons, Mr. Chairman, I would oppose this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. LARSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. LARSON of Connecticut. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Connecticut (Mr. LARSON) will be postponed.

It is now in order to consider amendment No. 2 printed in part B of House Report 108-466.

AMENDMENT NO. 2 OFFERED BY MR. LARSON OF CONNECTICUT

Mr. LARSON of Connecticut. Mr. Chairman, I offer an amendment.

The Chairman. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. LARSON of Connecticut:

Amend paragraph (3) of section 26(b) of the Revised Statutes of the United States, as proposed to be added by the bill, to read as follows:

“(3) ELIGIBILITY OF CANDIDATES.—

“(A) IN GENERAL.—A candidate shall be eligible to run in a special election held in a State under this subsection if the candidate meets such requirements as may apply under State law.

“(B) EXTENSION OF DEADLINE FOR ELECTION.—A State may extend the deadline provided under paragraph (2) for a special election to the extent the State considers necessary to prepare balloting materials and distribute absentee ballots which include the names of all eligible candidates, and to otherwise ensure that all eligible candidates are given sufficient time to prepare for and participate in the election.”

The CHAIRMAN. Pursuant to House Resolution 602, the gentleman from Connecticut (Mr. LARSON) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. LARSON).

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would restore democratic protections to candidates who wish to run in expedited special elections under H.R. 2844, and would enhance the voters' electoral choices, which the bill, I believe, needlessly seeks to limit. It would also give to the States, who are our first responders in elections, greater flexibility to respond to problems raised by a potential catastrophe or terrorist attack.

The amendment accomplishes several major improvements in the bill. First, it would eliminate the bill's perhaps most outrageous defect, the ban on primary elections in the great number of States which use them in special elec-

tions. The bill does this indirectly by requiring political parties in the States to select their nominees within 10 days of the Speaker's announcement of vacancies. The amendment strikes out that provision while adding entirely different language enhancing candidate eligibility, voters' electoral choices, and State flexibility in election administration.

The use of primaries was one of the great reforms in American politics which distinguishes us from many forms of parliamentary government. There is no way States could conduct primaries under the 10-day restriction. Indeed, this deadline provides barely enough time for prospective candidates to assess whether they even want to run.

In place of primaries, the bill would require political party committees of some sort to select a nominee, which is a legitimate mechanism already in use in some States for special elections; but even in those States, 10 days is a very short time. And of course many States do not allow selection of candidates by party committees because they consider it undemocratic, and require the selection of candidates by popular vote.

The gentleman from Wisconsin (Mr. SENSENBRENNER), in answering a question that I posed at the Committee on House Administration markup of this bill, when I was seeking clarity about some of the provisions his bill—what the bill would actually do—was crystal clear on one issue in this bill. He would penalize political parties in those States which could not meet the 10-day deadline by requiring that their party lines to be left blank on the ballot. He writes to the committee that H.R. 2844 clearly provides that political parties may, not must, nominate candidates within the 10-days allowed in any manner they see fit. If they do not, or cannot nominate a candidate within the time allowed, such parties will not appear on the ballot.

Selection of nominees, of course, is the ultimate political process, but it is more often known for controversy, deal-making, and intrigue, rather than speed and efficiency. That is why we have the expression “the smoke-filled room.”

Imagine the nightmare if this bill became law, and the political parties in your district were unable to field any candidate because they could not convene under potentially adverse circumstances due to a national crisis, or if a party committee did not meet, but could not reach agreement on a nominee because there was strong competition among well-qualified candidates. How could there then be an election? Whom would the voters choose from the blank page?

I remind the Members that this bill's stated purpose is to expedite special elections, and to reconstitute the House of Representatives. Having elections without candidates would certainly accomplish the first goal, but

would obviously fail miserably in the second. Not only could the bill leave the voters without any candidates to choose from, but it could have other irrational effects as well.

For example, even in a State like Minnesota, which in 1977 held both a special primary and a special election for a House seat in only 29 days, H.R. 2844 would require the abandonment of the primary system even though such a State might, under normal conditions, be able to comply with the overall 45-day deadline of the bill. The State managed to hold its primary in this case in 15 days, but could it do it in 10 days—the time limit for candidate selection in H.R. 2844? Why should the bill penalize those States, which could achieve their electoral results following regular order, by forcing them to change their basic political practices, and suddenly start choosing candidates through party committees?

Mr. Chairman, the 10-day provision of this bill, and its potentially disastrous side effects, constitutes reason enough for the adoption of my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I claim time in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, I share the gentleman from Connecticut's (Mr. LARSON) concern that an expedited special election should be open to as many eligible candidates as possible. However, this amendment, although I do not believe intended, would indirectly undermine the very core of H.R. 2844, which is the establishment of a time frame for conducting expedited special elections that promptly fill House vacancies while still providing the necessary time for election preparation.

This amendment would permit each State to determine how much or how little time it needs to conduct a special election, thereby rendering meaningless H.R. 2844's 45-day time frame for conducting those elections. The framework for expedited special elections that is set forth in H.R. 2844 represents a balanced approach, taking into consideration both the need for an accelerated reconstitution of the House and also the need for adequate election preparation time. This amendment would knock that framework out of balance and would in all likelihood unnecessarily prolong the period that many American people would be without representation in the House of Representatives in the aftermath of a catastrophic attack.

I do say I appreciate the commitment to the States rights that my friends are showing on the other side of the aisle, demonstrated by their support of this amendment. I hope that commitment will continue to be reflected in future votes on other election-related matters, on all issues, for that matter.

However, I think we could agree that if there was ever a time when Federal preemption of State laws was appropriate, it would be in the aftermath of

an attack that has killed over 100 of us as Members of the House. We have an obligation to take action to make sure that in those circumstances this House is reconstituted with elected Members as quickly as possible. That is a Federal responsibility, not one that should be left to the States to decide. I cannot think of a more appropriate or more necessary time to exercise our article I, section 4 powers to regulate the time, place, and manner of elections.

□ 1430

Therefore, I would oppose this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Chairman, earlier I asked this body to consider two questions: How would the Framers feel about the House of Representatives constituted by a few Members or no House of Representatives at all, and how would their constituents react if they had no voice as the country were taken into war by an unelected Cabinet member?

Let me ask this question: The distinguished majority leader proudly held the Constitution of the United States up and presented to us that he was defending the Constitution with this legislation. Where, my good friends, in that sacred Constitution does it say that the political parties will be authorized to select the candidates who can be elected for the House of Representatives? If we are defending the Constitution, how in the name of the Framers can we say that political parties will select the candidates for office? And if we are saying that we are protecting the rights of our voters, how can we do so when we disenfranchise all independent voters from selecting their candidate of choice, and instead put that decision into the political elites, the very people who you assert you are protecting the voters from with your base bill?

Mr. NEY. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Chairman SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, this is another amendment to gut the bill. All you need to do is look at the last three lines of the amendment that says "or otherwise ensure that all eligible candidates are given sufficient time to prepare for and participate in the election."

A State could decide to postpone the election indefinitely because they decided that all the candidates needed to have 30 face-to-face debates, and that would fall into the catch-all clause. We need to have a specified time frame to reconstitute the House with elected Members, and that is why we have the time frame put down here.

I am very interested in listening to the argument of the gentleman from Washington that completely misses the

point. His side won a special election in Kentucky. I congratulate the gentleman from Kentucky (Mr. CHANDLER) for his victory. He did not win a primary election. He was not nominated by a Democratic Party convention and his opponent in the election was nominated by a Republican Party convention.

The election of the gentleman from Kentucky (Mr. CHANDLER) to the House to promptly fill the vacancy caused by the election of Ernie Fletcher, his predecessor, as Governor of Kentucky is no less democratic than the election of those of us that went through primaries.

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is easy to conceive of the circumstances in which companies that print ballots or manufacture voting machines or paper or computer equipment could be disrupted by the same catastrophic events which are triggering the special elections. The Nation's communications and commerce could be disrupted. My amendment gives the States the flexibility to respond.

Mr. Chairman, this is a very important amendment. It removes a number of major problems in the bill. I find it hard to imagine how Members could not support a proposal which could restore primaries, enhance the ability of candidates to get on the ballot, and give the States greater flexibility to administer special elections in a time of crisis.

Mr. Chairman, I urge an "aye" vote.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. DREIER), the chairman of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Chairman, I would like to begin by yielding to my friend from Washington (Mr. BAIRD), to see if he would like to pose a question to me.

Mr. BAIRD. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Washington.

Mr. BAIRD. Mr. Chairman, if the gentleman would please show me where in the United States Constitution political parties are authorized to select candidates for the House of Representatives, I would be happy to engage in this colloquy.

Mr. DREIER. Mr. Chairman, reclaiming my time, I thank the gentleman for his question. I wanted to respond to it earlier.

Article I, Section 4 of the Constitution makes it very clear that times, places and manner of election are within the purview of this institution.

I would go on to say that the United States Supreme Court has correctly, in my opinion, held that the times, places and manner clause of Article I, Section

4, grants Congress broad power, broad power, over elections, including, and I quote from the Smiley v. Holm decision of the Supreme Court, where they say "authority to provide a complete code for Congressional elections, not as only to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting votes, making and publication of election returns."

Mr. Chairman, let me say that is the provision that was upheld by the Supreme Court, and to me that makes it very, very clear that we have that authority.

The issue of uniformity is something we were very, very careful in crafting in this legislation. Why? Because as we look at this 45-day period, we want to make sure that all across the country we have an opportunity for people in a time of crisis to at the same time cast their ballots.

Now, when my friend the gentleman from Connecticut (Mr. LARSON) used the issue of the State, I think it was Minnesota, that had that 15-day provision, I am convinced that just as we in California were able to take on that very unique and unprecedented recall election that we held last year, similarly States like Minnesota, which have had that nominating process take place, they have held those primaries in 15 days, similarly that nominating process could take place within the 10-day period.

We all know, Mr. Chairman, that this would be an extraordinary circumstance. And one of the reasons, I would say to my friend from Washington who raised the concern about the immediacy of trying to ensure that we have a full complement of Members of the House working, that is the reason that we have the 45-day period put into place, and that is the reason that we spent a great deal of time over the last year and a half talking with secretaries of state across this country, including, as I said, the three members of this institution who did serve as secretaries of state, to come up with a time which would best allow us to ensure those rights, realizing that this is in an extraordinary, potentially very difficult time for our Nation.

Mr. BAIRD. Mr. Chairman, if the gentleman will yield further, my question is, where in the Constitution of the United States? I understand the Supreme Court has ruled that, but the point is if the gentleman is asserting that the purpose of this bill before us today is to protect the rights of all voters to elect their Representatives, effectively it is my position that you are disenfranchising those from independent parties or minority parties from selecting their candidates.

The second thing I would ask, since we are quoting the Constitution, is where in the Constitution or in subsequent Supreme Court decisions has it authorized the executive branch to function without checks and balances

from a House of Representatives or from a House of Representatives comprised of less than a quorum?

Mr. DREIER. Mr. Chairman, reclaiming my time, let me say there is no attempt whatsoever to give the executive branch the opportunity to run without the oversight that is, in fact, ensured in the Constitution. I believe that we would have a complement of Members. I do not know exactly what that would consist of, but the goal of this legislation is to make sure that we can get back to the full 435 membership, ensuring that we are the body of the people.

I would say that one of the interesting things about our Constitution, juxtaposed to other constitutions in the world and State constitutions, mine in California being an example, is the fact that any of us, just like the majority leader, are able to put it in our pocket. So that is why that very small item that I mentioned in Article I, Section 4 of the Constitution, makes it clear, and that interpretation, upheld by the United States Supreme Court, makes it clear that we do have the ability to do that. That is how we are legislatively able to proceed with this.

I will once again say to my friend from Washington and others on this issue, as we look at what appears to me to be growing opposition to amending the U.S. Constitution, and I will say to my friend, I have had Democrats as well as nearly every Republican with whom I have spoken on this say they are opposed to it, I think that there should be a realization that for us to take this first step with this very responsible, very balanced, very thoughtful approach, which has been considered over a long period of time, is the route for us to take.

Mr. LARSON of Connecticut. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, again I would add sincerely how much I have appreciated the debate and the depth of the debate that has taken place on the floor today.

I harken back to something I said during the debate on the rule, a notion that was brought up by the gentleman from Massachusetts (Mr. MCGOVERN), that the only time, to my knowledge, that we have met in joint caucus has been when we were discussing the anthrax issue, and by the nature of this debate and the richness of this debate and the feelings on all sides, it rises above in so many respects the Committee on Rules, the Committee on House Administration and the Committee on the Judiciary and belongs in front of Members to discuss because of so many of these issues that are before us.

I quoted Judge Learned Hand before, and I will continue to quote him, because while you may be sure that all of these things can be accomplished in 45 days, I remain skeptical that that could happen, and my skepticism comes from wanting to provide the

very constituents that would send someone through these doorways, duly elected, to have fully participated and therefore legitimized that election as well.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. LARSON of Connecticut. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I would say that there is no way that you are going to get me to argue with Learned Hand. I share that skepticism, and I believe that is a very healthy thing, and it is an important thing.

We have pondered almost every possibility. As I listened to the opening statement that was made during the debate on the rule from my friend from Washington describing what conceivably could happen if we were in the midst of a State of the Union Address, and we had every single Member of the House and Senate and everyone, save the one member of the Cabinet who does not come to these addresses, obliterated, what would happen. Frankly, if it was as described, a nuclear bomb were to go off in this area, who knows how far that would reach, and that individual could be killed. So we have pondered everything.

What we have done, I believe, is we have worked very hard talking to many, many different people about the most balanced way that we can approach an imponderable, difficult situation, and I think we have come up with something reasonable. That is why in light of the fact it is going to be very difficult, I am happy to say, for a constitutional amendment to pass this body, I think that we need to ask the question, what is the backup position? What is it that is proposed, short of a constitutional amendment, other than this legislative approach, which we have tried to take in a bipartisan way?

Mr. LARSON of Connecticut. Mr. Chairman, reclaiming my time, I would suggest that my amendments, I think, improve that.

Mr. DREIER. Mr. Chairman, if the gentleman would further yield, the amendment extending from 45 to 75 days in fact lengthens the amount of time when we could possibly get this body back together.

Mr. LARSON of Connecticut. Mr. Chairman, reclaiming my time, this deals with the 10-day provision underneath, which again prohibits primaries.

Mr. NEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. LARSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. LARSON of Connecticut. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Connecticut (Mr. LARSON) will be postponed.

It is now in order to consider Amendment No. 3 made in order by the order of the House of earlier today.

AMENDMENT OFFERED BY MRS. MALONEY

Mrs. MALONEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Is the gentlewoman from New York (Mrs. MALONEY) the designee of the gentleman from Missouri (Mr. SKELTON)?

Mrs. MALONEY. Yes, Mr. Chairman, I am.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment made in order by a previous order of the House in lieu of Amendment No. 3 printed in House Report No. 108-466 offered by Mrs. MALONEY:

In section 26(b) of the Revised Statutes of the United States, as proposed to be added by the bill, add at the end the following new paragraph:

“(5) PROTECTING ABILITY OF ABSENT MILITARY AND OVERSEAS VOTERS TO PARTICIPATE IN SPECIAL ELECTIONS.—

“(A) DEADLINE FOR TRANSMITTAL OF ABSENTEE BALLOTS.—In conducting a special election held under this subsection to fill a vacancy in its representation, the State shall ensure to the greatest extent practicable (including through the use of electronic means) that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act) not later than 15 days after the Speaker of the House of Representatives announces that the vacancy exists.

“(B) PERIOD FOR BALLOT TRANSIT TIME.—Notwithstanding the deadlines referred to in paragraphs (2) and (3), in the case of an individual who is an absent uniformed services voter or an overseas voter (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act), a State shall accept and process any otherwise valid ballot or other election material from the voter so long as the ballot or other material is received by the appropriate State election official not later than 45 days after the State transmits the ballot or other material to the voter.”

The CHAIRMAN. Pursuant to House Resolution 602, the gentlewoman from New York (Mrs. MALONEY) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from New York. (Mrs. MALONEY).

□ 1445

Mrs. MALONEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the Skelton amendment, and I am pleased to join my colleague and friend, the gentleman from Missouri (Mr. SKELTON), in offering this amendment. He has always been a strong advocate for the men and women in the military. And the purpose of this amendment is to ensure that overseas voters, including the men and women who are risking their lives to protect our country, their dependents, and private citizens, will have an opportunity to vote in a continuity-of-government election.

I join my colleague in thanking the gentleman from California (Chairman DREIER) and the gentleman from Missouri (Mr. BLUNT) for working with us

to bring this amendment to the floor. While this is not the amendment that we originally offered before the Committee on Rules, we appreciate their good-faith efforts to reach this compromise.

The terrorist attacks of September 11 made us all aware of how vulnerable our government could be in the event of a catastrophe. The underlying bill provides for special elections if more than 100 Members of the House are incapacitated or killed. While there are many objections to the bill, it protects the tradition that Members of the House may only serve if they have been elected by the people.

Our amendment simply requires States to provide overseas voters 45 days to return their ballots from the date on which the ballot is mailed. If we are going to have elections to deal with disasters as envisioned by this legislation and which we hope will never happen, our amendment will ensure that overseas voters have the same opportunity that our voters at home have to cast their ballots.

For several years I have been working on making sure that overseas voters can participate in elections. In the Help America Vote Act, my colleague from the other side of the aisle, the gentleman from New York (Mr. REYNOLDS), and I were able to include provisions that will ensure that overseas voters have a better opportunity to vote in Federal general elections.

The Skelton-Maloney amendment is a continuation of this effort by helping overseas American voters participate in a continuity-of-government election if one should be necessary.

We owe a tremendous debt of gratitude to the men and women who are serving our country. At the very least we must make the efforts to make sure that they are included in the basic right of participating in elections. This extends the number of days from the date that the ballot is mailed so that they have time to mail it back and be part of this election.

Mr. Chairman, I reserve the balance of my time.

Mr. BLUNT. Mr. Chairman, I ask unanimous consent to control the time in opposition to this amendment, though I do not oppose the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. BLUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to be working with my colleagues, the gentlewoman from New York (Mrs. MALONEY) and the gentleman from Missouri (Mr. SKELTON), to bring this amendment to the floor. It does allow additional time for those who are serving in the military or those who are overseas to receive their ballot and be allowed to return their ballot. It does not prevent the States from certifying a winner, but only allows extra time if needed for those overseas ballots to be counted.

As a former Secretary of State and chief election official of our State, there would be many occasions when you might still have a ballot out, but it is clear to the State election official that the ballot out would make no difference in the outcome and consequently no particular reason to slow down the process of certifying in the circumstances we are talking about.

At the same time, if those ballots that had not been returned would make a difference, they would have to be counted, have to be part of the process, and would assure that all those who could have made a difference in the outcome of the election had a chance to do this.

In all likelihood, we would see State election officials doing everything they could to expedite this process. We give them in the language here certainly authority to use electronic means to transmit ballots to people overseas or in the military. Also we require that, if practical, election officials have a ballot ready to send out within 15 days of the starting of that original 45-day clock. I think in these circumstances that is certainly a time that election officials could meet. But because the way this is worded, if they cannot meet that language, there is no penalty. There is just a clear encouragement here to move this process along, get those ballots in the mail, and take time then, as necessary, for those ballots to return.

I particularly appreciate my friend, the gentleman from Missouri (Mr. SKELTON), and the great commitment he has on this and to those who serve us. It is a privilege for me to stand here in support of this amendment that he and the gentlewoman from New York (Mrs. MALONEY) and I have jointly recommended be included in this legislation.

Mr. Chairman, I reserve the balance of my time.

Mrs. MALONEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. Mr. Chairman, first let me say that the amendment being offered today by my friend and colleague, the gentlewoman from New York (Mrs. MALONEY), and by my next door neighbor back home, the gentleman from Missouri (Mr. BLUNT), is very important. It would ensure that adequate time is provided to the States holding continuity-of-government elections to ensure that overseas and deployed servicemembers have sufficient time in which to register and vote.

I would like to thank the gentleman from California (Mr. DREIER) also and the ranking member of the Committee on Rules, the gentleman from Texas (Mr. FROST). Again, a special thanks to the gentlewoman from New York (Mrs. MALONEY) and the gentleman from Missouri (Mr. BLUNT) for working with us. We had to work it out over a period of several days. And we appreciate, I think, at the end of the day, it is a

very, very good amendment. So we thank them for that.

This act would require States to conduct expedited special elections in extraordinary circumstances which means that there are more than 100 vacancies in the House of Representatives. States would have 45 days in which to nominate candidates and hold elections to fill these congressional vacancies.

The deadly terrorist attacks on September 11 raised the Nation's awareness that a catastrophic assault on our country's soil was not just a historical event, but a constant threat that we truly must face. We are living in an environment where terrorists are willing to target unarmed civilians and innocent bystanders to call attention to their cause. Unlike military conflicts in the past, these extremists do not follow acceptable standards for rules of engagement under the Geneva Convention.

The threat of future terrorist attacks convinces me that we need to review the process by which we provide continuity of government in case of a catastrophic attack on Congress. However, any effort we undertake should not alienate or disenfranchise any American citizen, particularly those who volunteered or who serve at the point of the spear, American servicemembers.

This amendment would ensure that adequate time is provided to military members who are serving overseas to participate in the most basic right of this country's democracy, the right to vote.

The Department of Defense has been working with States to ensure that at least 45 days of transit time are provided during regular elections so that overseas and deployed members and other Americans stationed overseas have the opportunity to participate. To be fair to our men and women in uniform, States should provide 45 days from the time from which the ballot is mailed to the voter to the date by which the voter must return the ballot to the local election official.

The amendment that is offered today by the gentleman from Missouri (Mr. BLUNT), the gentlewoman from New York (Mrs. MALONEY), and me simply seeks to ensure that servicemembers and American citizens who are stationed or deployed overseas may fully participate in this special electoral process. The amendment seeks no more than basic fairness.

I urge my colleagues to support this amendment, to protect the voting rights of those in uniform and those who serve so well and so ably overseas.

Mr. BLUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in relation to this, the general topic here of the bill, I mentioned the importance of preparing these ballots in a quick period of time. I know that my friend, the gentleman from Rhode Island (Mr. LANGEVIN), earlier, also a former Secretary of State, questioned whether 45 days was practical or not. I would just like to point

out that 10 States already have a time frame that is 45 days or less. Rhode Island is pretty small. A State very close, New York, that is very big, has a 40-day time frame now. Texas has a time frame that is within the 45 days, and eight other States do as well.

I certainly think that is a reasonable period of time, particularly in these extraordinary circumstances. I think we would see State election officials not only eager to help reconstitute the House but also encouraging the quick movement in the process of the selection of candidates and the preparation of ballots. Those ballots would then be mailed to military personnel and personnel overseas. And those individuals serving, as the gentleman from Missouri (Mr. SKELTON) said, particularly those in the military serving at the point of the spear, would have the time that they would appropriately need to have to respond to this process.

Mrs. MALONEY. Mr. Chairman, having no other speakers, I yield back the balance of my time.

Mr. BLUNT. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mrs. MALONEY).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in part B of House Report 108-466.

AMENDMENT NO. 4 OFFERED BY MR. SCHIFF

Mr. SCHIFF. Mr. Chairman, the gentlewoman from Texas (Ms. JACKSON-LEE) has an amendment at the desk made in order under the rule that I will be offering on her behalf as her designee.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. SCHIFF:

In section 26(b)(4)(C)(i) of the Revised Statutes of the United States, as proposed to be added by the bill, strike "2 days" and insert "7 days".

In section 26(b)(4)(C)(iii) of the Revised Statutes of the United States, as proposed to be added by the bill, insert after "the action" the following: "(taking into account an opportunity for an expedited appeal of the initial decision)".

In section 26(b)(4)(C)(iv) of the Revised Statutes of the United States, as proposed to be added by the bill, insert after "vacant" the following: "any citizen of the district and any political party of the State".

The CHAIRMAN. The gentleman from California (Mr. SCHIFF) and the gentleman from Wisconsin (Mr. SENBRENNER) each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, the amendment that I offer today on behalf of the gentlewoman from Texas (Ms. JACKSON-LEE) would make a few minor changes with respect to the judicial review provisions currently within the bill. The amendment would briefly extend the amount of time for an action

to be filed in court with regard to the Speaker's announcement of a vacancy. It would further provide for the appeal of that court's decision and for participation in this process by all citizens.

Mr. Chairman, the matter we are discussing today on the floor, the reconstitution of this House in response to a devastating attack, is certainly a contingency that none of us would like to imagine. It is a scenario that, frankly, seems unthinkable. However, because of the continuing threat of terrorism that we face, we must contemplate even the unthinkable.

The House of Representatives is indeed a unique body. As a purely representative body, there is only one way to get here: by direct election of the people of this great Nation. I cherish that heritage, and I know my colleagues do as well; but the love of that tradition cannot take precedence over the need to ensure continuity of our representative government in the face of unprecedented disaster, the annihilation of a large number of our Members.

The base bill contemplates that we would operate without a government for 45 days. This, my colleagues, is a dereliction of duty. It is a dereliction of our duty to ensure that the governance of our Nation goes on in the face of such a tragedy. I, therefore, oppose the base bill. During the 45 days that followed the events of September 11, Congress worked vigorously to respond to the attacks on our Nation. No doubt the devastation of our Congress and the equally accompanying trauma of such a devastation would require the most prompt response likewise. The principle that all the people should be equally represented is essential to our democratic character, and mass vacancies for 45 days will be a departure from the representative rule of that body.

Without a quorum in the House, the inability to conduct business may, in turn, force a President to act extraconstitutionally in any immediate response to an attack. By protecting one tradition, we would instead be scuttling others; and in the process we will only deny the American people the assurance that our swift and decisive response was a legitimate one.

□ 1500

Mr. Chairman, the survival of our very Nation must take precedence over our fond and philosophical adherence to the principal of direct election to the House under all circumstances. The temporary appointment of Members to fill vacancies where 100 or more of our Members are killed or incapacitated is the narrowest of exceptions. In the unlikely event we should ever face such a terrible contingency, our country's future will depend more, far more, on the swift response of a fully reconstituted Congress than on a blind adherence to the principle of direct elections for 45 excruciating days. I, therefore, oppose the base bill.

Mr. Chairman, I reserve the balance of my time.

Mr. SENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is another amendment that is designed to slow down having an election to replace Members who have been wiped out as a result of a terrorist attack. It has a number of features that will do that and will open up Pandora's box to allow people to game the system.

The first part of the amendment extends by 5 days, from 2 days to 7 days, the time in which legal action can be filed on the narrow issue of whether there are 100 vacancies and whether a vacancy occurs in a particular district.

The second section of the gentleman's amendment is not properly drafted. The base bill says that the decision of the district court of 3 judges must be rendered within 3 days and is not reviewable. However, the second section of the amendment says, taking into account the opportunity for an expedited appeal of the initial decision.

There is no appeal of the initial decision in the base bill, and the second section makes that section of the revised statute inconsistent in its text.

The third section of the amendment proposes to allow anybody or a political party to petition for an appeal. This is how the system can be gamed. My district is an overwhelmingly Republican district. It has never elected a Democrat to the House of Representatives in over 40 years. If I should be annihilated, I am sure that there would be the temptation that would be there for the Democrats in my district to try to stop an election and try to stop a Republican from probably being elected and seated to replace me. Similarly, in the district next door to me, currently represented by the gentleman from Wisconsin (Mr. KLECZKA), that is an overwhelmingly Democratic district, and the temptation would be there under this amendment for the Republican Party or Republican citizens to file a lawsuit to slow down the election of the replacement of the gentleman from Wisconsin (Mr. KLECZKA) should he be annihilated in a terrorist attack.

So the amendment that has been offered allows people to game the system for political ends rather than to rise above partisanship at times of a crisis and to speedily elect a replacement Member when someone has been wiped out in a terrorist attack.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHIFF. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the comments of the chairman of the Committee on the Judiciary and all the work that he has done on the committee. He expresses a concern about the timeliness of the process contemplated by this amendment, and I share the concern about the timeliness of the process contemplated in the base

bill. And, in fact, this is one of the reasons I have such concerns about the base bill. Whether it is 45 days or 47 days or 50 days, this is far too long in the wake of catastrophe to be reconstituting the Congress.

I also share the chairman's desire that we rise above considerations of partisanship and think that this bill should go back to committee and come forth with a bipartisan measure that comes forth for all of us. This is a bipartisan bill. It should have a bipartisan work product.

Mr. Chairman, I yield 60 seconds to the gentlewoman from California (Ms. WATSON).

Ms. WATSON. Mr. Chairman, in reading the base bill I have a concern, and it has nothing to do with the number of days, but it has all to do with how that is triggered.

In the legislation itself it says, "Extraordinary circumstances occur when the Speaker of the House of Representatives announces that vacancies have occurred."

Now, should, and God forbid on the evening that we would have the State of the Union, and we are all here, and there should be a missile, it could wipe out everyone, including everyone that is on the list at that time. Who then triggers this action? Who are the people? Who has the authority to put this process in place?

Mr. DREIER. Mr. Chairman, will the gentlewoman yield?

Ms. WATSON. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank the gentlewoman for yielding to me.

Let me say that the imponderable, if every single one, all 537 of the Federally elected officials, the President, the Vice President and all the Members of the House, and all the Members of Senate, in fact, are killed, including all of the Cabinet members, including the Cabinet member who is not here at the State of the Union message, it would be up to the people to come together and make the determination as the rebuilding process begins.

I thank my friend for yielding.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have heard an awful lot that this is not a bipartisan bill. This is a bipartisan bill, and I would draw the attention of the Members to the reported bill does show that additional cosponsors include the two top Democrats on the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS) and the gentleman from California (Mr. BERMAN).

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. SCHIFF).

The amendment was rejected.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now

resume on those amendments on which further proceedings were postponed in the following order:

Amendment No. 1 offered by the gentleman from Connecticut (Mr. LARSON);

Amendment No. 2 offered by the gentleman from Connecticut (Mr. LARSON).

The first electronic vote will be conducted as a 15-minute vote. The second electronic vote will be conducted as a 5-minute vote.

AMENDMENT NO. 1 OFFERED BY MR. LARSON OF CONNECTICUT

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Connecticut (Mr. LARSON) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 229, not voting 25, as follows:

[Roll No. 128]

AYES—179

- Abercrombie Farr Meek (FL)
Ackerman Fattah Meeks (NY)
Alexander Filner Menendez
Allen Ford Miller (NC)
Andrews Frank (MA) Miller, George
Baca Gonzalez Moore
Baird Gordon Moran (VA)
Baldwin Green (TX) Murtha
Ballance Grijalva Nadler
Blancero Gutierrez Napolitano
Bell Harman Neal (MA)
Berkley Hill Olver
Berman Hoeffel Ortiz
Berry Holden Owens
Bishop (GA) Holt Pallone
Bishop (NY) Honda Pastor
Blumenauer Hooley (OR) Payne
Boswell Hoyer Pelosi
Boucher Insee Pomeroy
Boyd Israel Price (NC)
Brady (PA) Jackson (IL) Rahall
Brown (OH) Jefferson Rangel
Brown, Corrine John Reyes
Capps Johnson, E. B. Rodriguez
Capuano Kanjorski Ross
Cardoza Kaptur Rothman
Carson (IN) Kennedy (RI) Roybal-Allard
Carson (OK) Kildee Ruppersberger
Chandler Kilpatrick Rush
Clay Kind Ryan (OH)
Conyers Kucinich Sabo
Cooper Lampson Sánchez, Linda
Costello Langevin T.
Cramer Lantos Sanders
Cummings Larsen (WA) Sandlin
Davis (AL) Larson (CT) Schakowsky
Davis (CA) Lee Schiff
Davis (FL) Levin Scott (VA)
Davis (IL) Lewis (GA) Serrano
Davis (TN) Lipinski Sherman
DeFazio Lofgren Skelton
DeGette Lynch Slaughter
Delahunt Majette Smith (WA)
DeLauro Maloney Solis
Deutsch Markey Spratt
Dicks Marshall Stark
Doggett Matheson Stenholm
Dooley (CA) Matsui Strickland
Doyle McCarthy (MO) Stupak
Edwards McCarthy (NY) Tanner
Emanuel McCollum Tauscher
Engel McDermott Taylor (MS)
Eshoo McGovern Thompson (CA)
Etheridge McIntyre Thompson (MS)
Evans Meehan Tierney

- Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen

- Velázquez
Visclosky
Waters
Watson
Watt

- Waxman
Weiner
Woolsey
Wu
Wynn

NOES—229

- Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Case
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Fossella
Franks (AZ)
Frelinghuysen
Frost
Garrett (NJ)
Gerlach
Gibbons
Gilchrest

- Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
McNulty
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle

- Oberstar
Obey
Osborne
Ose
Otter
Oxley
Pascrell
Paul
Pearce
Pence
Peterson (MN)
Petri
Pickering
Pitts
Platts
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Simmons
Simpson
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
McKeon
Tiberi
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—25

- Cardin
Carter
Clyburn
DeMint
Duncan
Forbes
Gallegly
Gephardt
Goss

- Hastings (FL)
Hinche
Hinojosa
Hulshof
Jackson-Lee (TX)
Jones (OH)
Millender-McDonald

- Mollohan
Peterson (PA)
Pombo
Shuster
Smith (MI)
Sullivan
Tauzin
Toomey
Young (AK)

ANNOUNCEMENT BY THE CHAIRMAN PRO
TEMPORE

The CHAIRMAN pro tempore (Mr. ISAKSON (during the vote)). Members are advised there are 2 minutes remaining in this vote.

□ 1531

Messrs. BURNS, PUTNAM, NORWOOD, BARRETT of South Carolina, Ms. GINNY BROWN-WAITE of Florida, and Messrs. ROGERS of Alabama, FROST, OTTER, and TAYLOR of North Carolina changed their vote from "aye" to "no."

Mr. EDWARDS and Ms. SLAUGHTER changed their vote from "no" to "aye." So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2 OFFERED BY MR. LARSON OF
CONNECTICUT

The CHAIRMAN. The pending business is the demand for a recorded vote on amendment No. 2 offered by the gentleman from Connecticut (Mr. LARSON) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 188, noes 217, not voting 28, as follows:

[Roll No. 129]

AYES—188

Abercrombie	DeGette	Kaptur
Ackerman	Delahunt	Kennedy (RI)
Alexander	DeLauro	Kildee
Allen	Deutsch	Kilpatrick
Andrews	Dicks	Kind
Baca	Doggett	Kucinich
Baird	Dooley (CA)	Lampson
Baldwin	Doyle	Langevin
Ballance	Edwards	Lantos
Becerra	Emanuel	Larsen (WA)
Bell	Engel	Larson (CT)
Berkley	Eshoo	Lee
Berman	Etheridge	Levin
Berry	Evans	Lewis (GA)
Bishop (GA)	Farr	Lofgren
Bishop (NY)	Fattah	Lowe
Blumenauer	Filner	Lynch
Boswell	Ford	Majette
Boucher	Frank (MA)	Maloney
Boyd	Frost	Markey
Brady (PA)	Gonzalez	Marshall
Brown (OH)	Gordon	Matheson
Brown, Corrine	Green (TX)	Matsui
Capps	Grijalva	McCarthy (MO)
Capuano	Gutierrez	McCarthy (NY)
Cardoza	Hall	McCollum
Carson (IN)	Harman	McDermott
Carson (OK)	Hefley	McGovern
Chandler	Hill	McIntyre
Clay	Hoeffel	Meehan
Conyers	Holden	Meek (FL)
Cooper	Holt	Meeks (NY)
Costello	Honda	Menendez
Cramer	Hoolley (OR)	Michaud
Crowley	Hoyer	Miller (NC)
Cummings	Inslee	Miller, George
Davis (AL)	Israel	Moore
Davis (CA)	Jackson (IL)	Moran (VA)
Davis (FL)	Jefferson	Murtha
Davis (IL)	John	Nadler
Davis (TN)	Johnson, E. B.	Napolitano
DeFazio	Kanjorski	Neal (MA)

Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascarell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush

Ryan (OH)
Sabo
Sánchez, Linda T.
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Solis
Spratt
Stark
Stenholm
Strickland
Stupak

NOES—217

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggart
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehkert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Case
Castle
Chabot
Chocola
Coble
Cole
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doolittle
Dreier
Dunn
Ehlers
English
Everett
Feeney
Ferguson
Flake
Foley
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor

Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wu
Wynn

NOT VOTING—28

Cardin	Goss	Neugebauer
Carter	Hastings (FL)	Peterson (PA)
Clyburn	Hinchee	Pombo
Collins	Hinojosa	Shuster
Cox	Hulshof	Smith (MI)
DeMint	Jackson-Lee	Tauzin
Duncan	(TX)	Toomey
Emerson	Jones (OH)	Young (AK)
Forbes	Millender-McDonald	
Galleghy	Mollohan	
Gephardt		

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN (during the vote). There are 2 minutes remaining in this vote.

□ 1540

Ms. PRYCE of Ohio changed her vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. NEUGEBAUER. Mr. Chairman, on roll call No. 129, I was unavoidably detained. Had I been present, I would have voted "no."

PERSONAL EXPLANATION

Mr. GOSS. Mr. Chairman, on roll call Nos. 128, 129, I was unavoidably detained. Had I been present, I would have voted "no."

PREFERENTIAL MOTION OFFERED BY MR. BAIRD

Mr. BAIRD. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. BAIRD moves that the Committee of the Whole do now rise and report the bill H.R. 2844 back to the House with the recommendation that the enacting clause be stricken.

The CHAIRMAN. The gentleman from Washington (Mr. BAIRD) is recognized for 5 minutes in support of his motion.

Mr. BAIRD. Mr. Chairman, this is as serious as it gets. Two and a half years ago, we were given a remarkable gift. We were given the gift of life itself, as a plane was heading this way with the intent to kill all of us. Had they succeeded, the institution that we hold so dear, that provides for representation on a proportional basis by the citizens of our areas would have at least temporarily perished.

We have no adequate provisions before us today to fill that gap should it happen, but we have no question today that we must confront that possibility. In an era of nuclear weapons, of terrorists who mean our destruction, we must accept our own mortality in order that we can preserve the immortality of this institution we all so cherish.

We have had a spirited debate today. I lament that we were not all given sufficient time to participate, that key amendments were not offered, and that we were not all here for this. I know well that we have many things to do, but this is about the very existence of the institution.

Yesterday I had the privilege of speaking with many of my colleagues on both sides of the aisle, and I asked a simple question: Have we, in all sincerity and honesty, given enough