

the governor? the legislature of each State? These are many questions that need to be answered, and all of them should be studied.

Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. BAIRD), the author of the amendment.

Mr. BAIRD. Mr. Speaker, I thank the gentlewoman from California for yielding me this time.

The reason I think we need to recommit this bill, and it is rare, I think, for an individual who has authored a bill to suggest a motion to recommit, because when I called for the discharge petition to bring this bill to the floor, it was not just this bill. I wanted to bring many different approaches so we could fully discuss it.

The fundamental question I would urge the chairman of the Committee on the Judiciary and its members and this body as a whole to consider is this: it is a fine thing to defeat this legislation, and I respect the judgments of the people who may choose to do so, but you have yet today, or in the prior discussion of the chairman's own bill, answered the question satisfactorily for the American people as to what happens during the 45 or 75 days. People continue to say, no one should ever serve in the House who was not elected. We would all prefer that that be the case. But you have never said clearly and unambiguously, with clear-cut constitutional justification, how our government runs without a House of Representatives. You have yet to do so. You have offered pleasantries, reassuring promises; but you have never said how the country runs.

Madison did want the representatives to be elected, but he wanted there to be representatives. The people back home want to have representatives. Who will choose to send your kids to war? Who will choose to protect your civil rights? Maybe you can just rely on someone you do not know, an unelected representative whom you do not know. Maybe you can rely on that. And if they send your kid to war wrongly or usurp your civil rights, you can take great reassurance that 75 days later you can impeach them, assuming that one of their actions in the interim has not been to somehow reduce your right to do that.

You are rolling the dice, my friends. You are rolling the dice, and you have not yet put in place a solution. Mine may not be perfect, it is not; but let us, please, have an opportunity to revisit this issue and answer that question.

Ms. LOFGREN. Mr. Speaker, I would ask only that we approach this on a bipartisan basis in the committee. We should hold hands and work on this as a team, not fighting each other on party-line votes.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, passing this motion to recommit will not serve to do anything but to continue a debate that has gone on for almost 45 years. In 1960, the Sen-

ate passed an amendment to allow for the appointment of House Members.

□ 1730

It was never voted on in the House of Representatives, and that was during the height of the Cold War when everybody was afraid that the Soviet Union would unleash a missile or massive numbers of bombers, and if we did not make it down to the bunker at the Greenbriar in West Virginia, the entire Congress would be wiped out. That was a crisis time, and the Congress did the right thing: It ignored what the Senate did in terms of appointment of House Members.

Sending this resolution back to committee is not going to change anybody's mind on whether replacement House Members should be appointed or elected. We ought to hit this issue directly on the nose and vote on the amendment after defeating the motion to recommit.

Now I am again very puzzled by the fact that many of the proponents of this amendment, including the Commission on Continuity in Government, and their spokesperson is Norman Ornstein of the American Enterprise Institute, have said that the problem should be addressed seriously and expeditiously. This is what we are doing today.

And the author of the resolution, who now wants to have more hearings, told Roll Call on October 23, 2003, that the more urgent matter is to put the measure before the body. The measure is before the body today. We ought to vote down the motion to recommit. We ought to have a clear vote on whether Members want to have temporary successors appointed or to preserve Madison's principle of having the People's House be elected by the people. It is time to stand up and be counted, not to have more hearings on the subject. Vote no on the motion to recommit and vote no on the joint resolution.

Mr. PAUL. Mr. Speaker, I rise in opposition to H.J. Res. 83, which amends the United States Constitution to allow appointed persons to fill vacancies in the House of Representatives in the event of an emergency. Since the Continuity of Government (COG) Commission first proposed altering our system of government by allowing appointed Members to serve in this body. I, along with other Members of Congress, journalists, academics, and policy experts, have expressed concerns that having appointed Members serve in the House of Representatives is inconsistent with the House's historic function as the branch of Congress most directly accountable to the people.

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 are 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 Federalists 52: "As it is es-

sential 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. Speaker, 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. 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. Speaker, during a time of crisis it is all the more important to have representatives accountable to the people making the laws. Otherwise, the citizenry has not 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 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 this plan claim that the appointment power will be necessary in the event of an emergency and that the appointed representatives will only serve for a limited time. However, the laws passed by these "temporary" representatives will be permanent.

Mr. Speaker, this country has faced the possibility of threats to the continuity of this body several times throughout our history, yet no one suggested removing the people's right to vote for Members of the House of Representatives. For example, when the British attacked the city of Washington in the War of 1812 nobody suggested the States could not address the lack of a quorum in the House of Representatives through elections. During the Civil War, Virginia which borders Washington, DC, and where today many Capitol Hill staffers reside and Members stay when Congress is in session, was actively involved in hostilities against the United States Government, yet President 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 supporting H.J. Res. 83 will question the wisdom of handing terrorists a victory over republican government.

The Constitution already provides the framework for Congress to function after a catastrophic event. Article I Section 2 grants the governors of the various States authority to hold special elections to fill vacancies in the House of Representatives. Article I Section 4 gives Congress the authority to designate the time, manner, and place of such special elections if states should fail to act expeditiously following a national emergency. As Hamilton explains in Federalist 59, the "time, place, and manner" clause was specifically designed to address the kind of extraordinary circumstances imagined by the supporters of H.J. Res. 83. Hamilton characterized authority over Federal elections as shared between the

States and Congress, with neither being able to control the process entirely.

Last month, this body fulfilled its Constitutional duty by passing H.R. 2844, the Continuity of Representation Act. 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 or more Members of the House have been killed. This proposal 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.

In conclusion, I call upon my colleges to reject H.J. Res. 83, since it alters the Constitution to deny the people's right to elect their representatives at a time when having elected representation may be most crucial.

Mr. HOLT. Mr. Speaker, I rise in opposition to this amendment.

The Founding Fathers designed the House of Representatives to guarantee the preferences and will of the people was represented. They included provisions in the Constitution, such as a 2-year term of office and requiring that vacancies be filled in all events by a special election, to ensure that the Members serving in this Chamber would be held directly accountable to the people.

Although the 17th amendment expanded this ideal of representation by requiring Senators to be directly elected by citizens of their State, it still permitted the use of appointments to fill vacancies. Therefore, the unique nature of the House of Representatives remained intact and to this day no Member has ever entered this body except by the mandate and popular vote of his or her constituents.

The stark realities of the 21st century, where terrorists seek to destroy our Nation and the incapacitation of a large portion of this Chamber is no longer inconceivable, require us to reexamine the continuity of our government. However, I believe that even in a terrorist attack or other catastrophe enough Members would survive to conduct the business of the Congress. The small probability that no Members would survive to serve does not warrant amending the Constitution to circumvent the electoral process. Suffrage is fundamental to the success of our democracy, and it must be protected even in times of crisis and uncertainty.

I urge my colleagues to vote against this amendment.

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in support of the efforts of our colleague Representative BRIAN BAIRD to secure House consideration of the issue of amending the Constitution of the United States to ensure the continuity of Congress. I had hoped for hearings on this critical issue in the Judiciary Committee, followed by "regular order", and I had hoped for consideration of a number of Constitutional amendments sponsored by Members of the House, including H.J. Res. 89, which I introduced. One subcommittee hearing conducted 2 years ago does not really do this subject justice.

Many Members were looking for an opportunity to use the normal legislative process to develop and perfect their proposals regarding the continuity of the House, relying on the collective wisdom of the Members, and input from constituents. Such a discussion could have helped to educate both Members and

the public on the importance of a Constitutional amendment. But because the truncated process foreclosed on that option, I did not submit my joint resolution to the Rules Committee.

Should the opportunity arise, I will vote to recommit this joint resolution to the Judiciary Committee, in the hope that there can be an open discussion, and broad debate on the matter. And I will vote for Rep. BAIRD's amendment, H.J. Res. 83, on final passage, in the hope that all Members who support the concept of a Constitutional amendment, will similarly express themselves on the worthiness of that objective, even though we may differ about which amendment would best serve this Nation. For I think this issue will arise again, and perhaps there will be an opportunity in the next Congress to more fully discuss and debate the issue. Sen. CORNYN's proposed Constitutional amendment is making its way through the Senate, so the issue is bound to arise again in some form.

While I believe the need for a Constitutional amendment is self-evident, I understand other Member's reservations about tinkering with the Constitution. Nonetheless, I have yet to hear a satisfactory answer to the question of what the Legislative Branch—not just the House—could constitutionally do in the weeks or months following an attack, if deaths and incapacitation left either chamber bereft of a quorum, incapable of legislating, or so unrepresentative as to delegitimize any actions it might take.

H.R. 2844, the "Continuity of Representation Act", which passed in April, and which called for special elections within 45 days after a certain number of vacancies occurred in the House, did not address that question. I think we need to be realistic about the consequences of a non-functional Legislative Branch at what is likely to be the most critical juncture in our Nation's history.

And I would like to put to rest the notion that the continuity of Congress debate is in any way partisan. There is no partisan content whatsoever to this issue. Neither Republicans nor Democrats are advantaged or disadvantaged by any of the ideas we are discussing. The vote on H.R. 2844 should have put that notion to rest, when a majority of Democrats voted for the bill, joining all but a handful of Republicans.

Members will no doubt recall that in the days and weeks following September 11, 2001, the House passed numerous pieces of vital legislation, which allowed the government to function both in war, and in furtherance of domestic policy goals. We did not hand out a "closed for business—trust the Executive" sign. We exercised the checks and balances essential to a stable and mature democracy, and we got the job of legislating done in record time.

In the absence of a Constitutional amendment, there is the sad prospect that the National could be governed by either martial law, or by other extra-Constitutional actions by the Executive, of potentially dubious legal status. This would be happening at the most critical time in the Nation's history, since that would be the only means left to run the government without a functioning Legislative Branch. And that would trample upon one of the core principles of the Framers of our Constitution—our system of checks and balances.

The Framers feared a powerful executive. And in the early days of our Republic, the of-

fice of President was fairly weak. However it has grown stronger over time, as the institutions of government have evolved, and as the Nation's needs have changed. The essential roles of Congress includes restraining the Executive, and that role remains paramount in maintaining our democracy today.

We cannot predict how the Executive, claiming potentially dictatorial powers, will operate in the absence of a functioning Legislative Branch, or whether such actions will withstand legal challenge. But we do know how to prevent this situation from ever occurring. We need only to remove our heads from the sand, and take the proper steps to legally address the issue under the Constitution.

While it is essential that we protect the "people's House" by populating it with popularly elected representatives from the 50 states, it is also essential that we protect the "people's interests" by taking action to prevent the Legislative Branch from ever being shut down for weeks and months following a catastrophic event.

I want to take a moment to discuss my own proposal, which I believe is less cumbersome and more straightforward than some of the other concepts. It would provide for the appointment of temporary Members of the House by state legislatures or, in some instances, by state governors, to serve pending the filling of vacancies through special elections. I think this procedure would be less cumbersome than using lists of potential successors which Members would have to create each and every time they ran for office. In the next Congress, I might consider leaving the appointment power to governors alone.

My amendment would require that all temporary replacements be from the same political party as the Members they succeeded, and that their tenure cease as soon as a popularly elected successor presents credentials to the House. I look forward to future hearings to debate that aspect of the proposal, since issues have been raised as to how someone's party affiliation can be determined in some states.

The amendment would also bar the temporary replacements from seeking office in the next election for the House, in order to ensure that they focus on representing their new constituencies, and coping with the emergency, rather than creating fund-raising committees and filming television commercials.

The subject is also deserving of significant debate, since I know some have argued that temporary replacements should have the right to present themselves to the public for election in our democratic system. I believe, however, that during a crisis following a potential attack, it is more important to keep the government running, and there is nothing in my amendment which would bar these temporary replacements from running at a future time, after they have finished discharging the responsibilities of the office to which they were appointed.

My proposed Constitutional amendment also addresses the complex subject of incapacity, by giving Congress the power, by law, to address it. The issue is better suited to examination in a law-making, or rule-making process, rather than to being specified in detail in the Constitution. As ranking member of the House Administration's Committee, which has jurisdiction over the incapacity question, I hope to press for Committee debate on the subject.

Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter

NOT VOTING—18

Ballance
Bereuter
Carson (OK)
Conyers
Costello
Cummings

Davis (FL)
DeGette
DeMint
Deutsch
Emerson
McCarthy (NY)

Nadler
Napolitano
Pickering
Stark
Tauzin
Wilson (NM)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1756

Ms. GINNY BROWN-WAITE of Florida and Messrs. JOHNSON of Illinois, SHERWOOD, HEFLEY, BEAUPREZ and BRADY of Texas changed their vote from “aye” to “no.”

Mr. TANNER and Mr. PASCRELL changed their vote from “no” to “aye.”

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

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

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

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

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

The vote was taken by electronic device, and there were—yeas 63, nays 353, answered “present” 2, not voting 15, as follows:

[Roll No. 219]
YEAS—63
Baird
Bell
Berkley
Blumenauer
Brown (OH)
Capuano
Case
Chandler
Crowley
Davis (TN)
DeFazio
Dicks
Dooley (CA)
Engel
Eshoo
Evans
Frost
Gephardt
Gutierrez
Hastings (FL)
Hinchey
Honda

NAYS—353

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite,
Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (IN)
Carter
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw

Hooley (OR)
Insee
Jones (OH)
Kennedy (RI)
Brown (OH)
Langevin
Larsen (WA)
Larson (CT)
Lowe
Lucas (KY)
Matheson
McCollum
McInnis
Meeks (NY)
Miller (NC)
Miller, George
Frost
Payrell
Payne
Pelosi
Rangel
Rohrabacher

Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Delahunt
DeLauro
DeLay
Israel
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
English
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinojosa

Meehan
Meek (FL)
Menendez
Mica
Michaud
Millender-
McDonald
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Neal (MA)
Nethercutt
Oberstar
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy

ANSWERED “PRESENT”—2

Jackson-Lee (TX)
Watt

NOT VOTING—15

Ballance
Carson (OK)
Conyers
Costello
Davis (FL)

DeGette
DeMint
Deutsch
Emerson
McCarthy (NY)

Nadler
Napolitano
Stark
Tauzin
Wilson (NM)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1805

Mr. EDWARDS, Ms. ROS-LEHTINEN, and Mrs. BONO changed their vote from “yea” to “nay.”

So (two-thirds not having voted in favor thereof) the joint resolution was not passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. NAPOLITANO. Mr. Speaker, on rollcall No. 218 and 219, had I been present, I would have voted “yea.”

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to clause 8 of rule XX, proceedings will resume on three motions to suspend the rules previously postponed.

Votes will be taken in the following order:

Snyder
Solis
Spratt
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (NM)
Upton
Van Hollen
Velázquez
Vislosky
Walden (OR)
Walsh
Wamp
Waters
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)