

PARTIES DIVIDED OVER CONTINUITY

Suzanne Nelson

Roll Call Staff

January 22, 2004

For the better part of a year, Members involved with solving the potential crisis of Congressional continuity have repeatedly assured themselves and others that the issue is not a partisan one.

But thinly concealed tensions broke the surface Wednesday at a House Judiciary Committee markup, when a controversial bill that would expedite special elections was reported out of committee on a party-line vote. All 18 Republicans present voted for it, while all 11 Democrats voiced their opposition.

This was not the first party-line vote on the issue nor the first contentious committee hearing. The House Administration Committee (which shares jurisdiction on the measure with Judiciary) reported the legislation out in November over the strong objections of Democrats.

But Wednesday's hearing elevated tensions to an even higher level. In front of a packed hearing room (full because the next item on the agenda was the divisive Unborn Victims of Violence Act), Judiciary Democrats repeatedly asked Chairman Jim Sensenbrenner (R-Wis.) to allow the panel to take more time to debate the measure and discuss alternatives.

Calling Congressional continuity a "matter of national constitutional import," Rep. Mel Watt (D-N.C.) chastised Sensenbrenner and the Republican leadership for stifling input on the issue, particularly from Members who believe expedited special elections alone are not sufficient to ensure the legislative branch's relevance in a crisis if large numbers of Members were killed or incapacitated. Watt was joined by ranking

member John Conyers (D-Mich.), and California Democratic Reps. Adam Schiff, Linda Sanchez and Zoe Lofgren. Sanchez said the panel was giving the issue "short shrift."

Sensenbrenner shot back that "those issues were very, very adequately ventilated," citing a House Administration hearing and subsequent markup last year. He also noted that the Judiciary subcommittee on the Constitution "has had hearings on this issue."

The subcommittee held one hearing on potential amendments in early March 2002.

As many lawmakers have done when discussing the subject, Watt prefaced his remarks by saying, "This is not a partisan issue."

But for at least the past year debate over continuity has played out primarily along party lines, especially in the House. For the most part - and to the extent Members have contemplated the issue at all - Republicans prefer to replenish House vacancies via special elections and Democrats believe a constitutional amendment is necessary to allow for temporary appointments.

Rep. Brian Baird (D-Wash.), who first raised the issue of continuity with Speaker Dennis Hastert (R-Ill.) days after Sept. 11, 2001, terrorist attacks said the leadership either "doesn't take this matter seriously enough or does not have enough confidence in the strength of their proposal relative to the alternatives to allow full debate."

"This matter is too important for partisanship or personal pettiness. And it's very troubling to me that on something this important the leadership of the Congress has not allowed the Members of Congress the opportunity to fully debate this matter," he added.

But Hastert's spokesman, John Feehery, shot back that Republicans simply want to continue to allow only for the direct election of House Members.

"We're not doing what they want to do, which is amend the Constitution to take away a fundamental tenet of the House," he said. "It shouldn't be a partisan issue, but they keep saying that we are not listening to their views. We are listening to their views, we just don't agree with them."

As Sensenbrenner repeatedly told frustrated Democratic lawmakers Wednesday, "This is a difference of philosophy."

And while he didn't expound on the point, and the issue is hardly part of either party's platform per se, it does have ideological underpinnings.

Democrats' objections to Sensenbrenner's bill - which would require special elections to replace House Members to occur within 45 days of the Speaker determining that more than a 100 Members had been killed - range from logistical issues raised by state election officials to more fundamental questions of disenfranchisement. Elections experts testified before a House Administration hearing last year that military personnel overseas, disabled individuals and minorities could be left out of a hurried special election. (Democrats are also concerned that the bill doesn't address incapacitation, which experts say Congress is more likely to face than mass casualties.)

But testimony by Sensenbrenner and Baird, among others, to House Administration made clear that the differences are even more fundamental. Generally, Democrats, more than Republicans, believe that the country couldn't function under the Constitution without an operable Congress for days or weeks. And many Democrats raise the specter of the imposition of martial

law, which they believe would be inevitable if the House couldn't obtain a quorum and Congress was rendered inoperable.

For the most part, Republicans are confident the government wouldn't collapse without a Congress capable of passing legislation and declaring war for a few weeks. Moreover, many Republicans believe the American people would rise to the challenge of carrying out special elections quickly in a time of crisis despite the numerous obstacles experts have said could lead to questions about their legitimacy.

For their part, most Senators operate under the assumption that the thorniest continuity issues are the House's problem, as the 17th Amendment allows states to choose how to fill vacant Senate seats.

(Forty-eight states do so by gubernatorial appointment. The 17th Amendment, however, does not provide for incapacitations, and theoretically the Senate could be without a quorum for up to four years if 50 Members were unable to perform their roles or resign their seats and the Senate refused to expel them.)

One Republican, Texas Sen. John Cornyn, who chairs the Judiciary subcommittee on the Constitution on his side of the Capitol, has said he believes a constitutional amendment is necessary to preserve checks and balances in the event a terrorist attack wiped out large numbers of lawmakers. His amendment language and implementing legislation met with strong resistance from Sensenbrenner and House Rules Chairman David Dreier (R-Calif.), but he has vowed to continue his efforts.

Baird said he is ready to introduce a resolution providing a rule for debate on the proposals of all Members who wish to bring one forward. If the leadership doesn't bring up the resolution, he plans to seek 218

signatures (or half of all Members) on a discharge petition, which would bring the issue to the floor.