

NAMING SUCCESSORS WOULD VIOLATE 'PEOPLE'S HOUSE'

By Don Wolfensberger

Roll Call

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Alton Frye is to be commended on providing a rationale for the proposal put forward by former Speakers Tom Foley (D-Wash.) and Newt Gingrich (R-Ga.) to permit the House of Representatives to replenish its membership in the event of large losses from a terrorist attack ("Guest Observer," April 8).

Their solution, however, to amend House rules to permit Members to predesignate their interim successors until special elections are held is both constitutionally and politically suspect.

Granted, the House has some latitude under the Constitution to "be the Judge of the Elections, Returns and Qualifications of its own Members" and to "determine the Rules of its Proceedings." But it is doubtful by any stretch that these two powers can be commingled to permit House Members to prejudge the election of their successors by predesignating interim appointments (no matter how qualified), until special elections are held.

The Constitution seems rather unequivocal in giving the people the right to choose their Representatives and in charging governors with issuing writs of election whenever vacancies occur in the House. To suggest that the Supreme Court might ignore any circumvention of these clear constitutional mandates given the emergency nature of the situation is wishful thinking at best.

The analogy of proxy voting in committees (which is no longer permitted in the House) can hardly be extended to allowing nonelected persons to vote on the House floor. In the first place, proxies are given to other elected

members to cast in committee. But, more importantly, committees are merely advisory to the full House and have no constitutional standing. The full House, on the other hand, is engaged in lawmaking activity that must be exercised by elected lawmakers.

Frye concedes that it might be wise to reinforce such a rule change with "a suitable constitutional amendment confirming the House's authority." But a constitutional amendment cannot be made to apply retroactively. It will do nothing to deter the potential for dozens of challenges to laws enacted by a House of designated interim successors.

The political problem with allowing Members to designate their interim successors is the possible public perception of "political cronyism" run rampant at a time when government should command the greatest respect and legitimacy. Exacerbating this perception would be the likelihood that many of the interim successors would be spending more of their time campaigning for the special election than focusing on the nation's immediate policy needs. This is not to say that Members would play cynical politics with their choices for successors - only that each Member would play smart politics in choosing someone likely to carry on his or her political legacy beyond just a few months.

Frye rightly recognizes the danger in giving governors the power to appoint interim successors, as some proposed constitutional amendments would do. A governor would not have the same awareness of the district's needs and orientation as would its Representative. Moreover, a governor might even appoint someone of a different political party than the deceased Member. So, his proposal for Members to predesignate their successors, at least if embodied in a constitutional amendment, might be perceived as less of a political fix than the gubernatorial-appointment approach.

Nevertheless, one cannot help but be concerned about the precedent of allowing unelected persons to serve in the House, even for a brief time. Alexander Hamilton, in explaining the Constitution to the New York state ratifying convention, said of the House quite simply, "Here, sir, the people govern; here they act by their immediate Representatives." Congress should honor the people's right to choose their immediate Representatives, even in the aftermath of a disaster that leaves the House diminished in numbers until special elections are held. Congress can provide for expedited special elections by statute and deal with any quorum problems posed by incapacitated members via House rules. The "People's House" should be restored to the people by the people from the outset of any national emergency. Shadow legislators are no answer to a democratic challenge.

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