

**BAIRD AMENDMENT GOES DOWN IN FLAMES; DEBATE FOCUSES ON SPLIT OVER RULE, NOT CONTINUITY MEASURE'S MERITS**

By Suzanne Nelson

*Roll Call*

June 3, 2004

The House voted resoundingly against a constitutional amendment Wednesday that would have allowed the temporary appointment of House Members, blocking an effort to ensure the chamber could continue to act as a check on the executive branch should a large number of lawmakers be killed or incapacitated in a catastrophe.

The vote itself, 353-63, was essentially a foregone conclusion. Four Republicans and 59 Democrats voted in favor of the amendment. No one, not even the resolution's sponsor, Rep. Brian Baird (D-Wash.), expected anywhere near the two-thirds majority required to pass the measure. Rather, Wednesday's deliberation, as has become the norm on the issue of Congressional continuity, was largely about process.

The debate was subject to a closed rule, preventing Rep. Dana Rohrabacher (R-Calif.) and two Democrats from offering their amendment proposals as substitutes. Baird and a handful of his Democratic colleagues said the closed rule contradicted Rules Chairman David Dreier's (R-Calif.) assertions that the GOP leadership has worked "in a strong bipartisan way" to ensure an open deliberative process. So instead of spending the allotted 90 minutes discussing the measure's merits, much of that time was instead dedicated to discussion of whether the duration and nature of the deliberation was appropriate to an issue so fundamental to the institution.

Rep. Doc Hastings (R-Wash.) said the measure "deserves to have a debate. This rule provides for that debate, 90 minutes."

"How indicative," Baird replied, "Ninety minutes to debate the future of this country in the event of a terrorist attack. Ninety minutes."

Calling the Republican leadership's approach full of "partisan rules and lousy procedures," Rep. Jim McGovern (D-Mass.) lamented that "there has not been one single hearing on a constitutional amendment." Conceding that Republicans' near universal opposition to a constitutional amendment "may be right" on principle, he said nonetheless, "I honestly believe that this whole issue has not been given the honest and serious attention that it deserves."

Dreier took issue with that premise, asserting that he and the leadership "have continued to work in a strong bipartisan way." Rather, he said, it has been "bipartisanship that has gotten us where we are today," namely to a "vote on what I personally believe is an ill-conceived idea."

Acknowledging that the Judiciary Committee hasn't held a hearing on a constitutional approach to the continuity problem this Congress - a point a half-dozen Democrats made repeatedly - Dreier maintained the hearing during the 107th Congress was adequate and lauded the leadership's willingness to hold a floor debate on a measure that Judiciary reported out adversely.

"We're deliberating," Dreier said. "I was asked to put in place a structure that would allow for a vote on a constitutional amendment."

But Baird wanted more than a debate on his proposal, which would allow governors to appoint temporary lawmakers from lists previously drawn up by Members.

He acknowledged on the floor that his is flawed and had previously drafted a rule for debate that would have allowed any and all proposals to deal with mass incapacitation or deaths of lawmakers to be considered.

Rohrabacher, too, was incensed Wednesday. "I asked the Rules Committee yesterday to make my proposal in order, and I was denied," he said. "That's why I voted present."

Asked before the vote if he was given a rationale, he said no, but indicated that Dreier told him "the leadership made the decision."

A spokesman for Speaker Dennis Hastert (R-Ill.) did not return a call for comment.

"I think it's disconcerting for a Republican that a Democrat gets his amendment on the floor," Rohrabacher said, complaining that his own leadership thwarted his proposal. "It doesn't make one feel good. You win some and you lose some. I just wish it would be winning some and losing some on direct votes on your measure rather than to a backroom decision."

Straying slightly from the GOP leadership's orthodoxy on the issue, Republican Policy Committee Chairman Christopher Cox (Calif.) said he voted against Baird's measure "only because it is not perfect, but I commend the gentleman for offering it."

Cox chaired the task force convened by Hastert following the Sept. 11, 2001, terrorist attacks to examine any and all rules, statutory and constitutional changes necessary to ensure Congressional continuity. He, along with Rep. Martin Frost (D-Texas), helped institute a number of rules changes to allow the House to more easily reconvene and permit the Speaker to choose designees to gavel the chamber back into session should he be unable to do so.

With the exception of Cox, every Republican who rose to debate the issue said the sanctity of an elected House prohibited them from considering Baird's proposal or any other that would allow for the temporary appointment of House Members in a time of crisis.

Republicans almost universally referred to the Federalist Papers and author James Madison's insistence on an elected House, which Judiciary Chairman James Sensenbrenner (R-Wis.) said is the only way to guard against "aristocracy" and "tyranny."

But Baird, quoting Federalist 10, said the founders' absolute insistence on direct election to the "People's House" was mitigated by their equally strong desire to ensure checks and balances and a representative House, both of which he said would be destroyed if mass incapacitation or death were to prevent the chamber from reaching a quorum.

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny," Baird quoted Madison as writing.

Recognizing how unusual it was for a Member to suggest a motion to recommit his own measure, Baird nonetheless urged his colleagues to allow more time for its consideration in committee.

McGovern agreed. "What today is supposed to be about is more than just giving Mr. Baird his day on the floor. How can this be a bipartisan process if the committee of jurisdiction didn't even hold a hearing?"

**CORRECTION-DATE:** June 7, 2004  
Monday

**CORRECTION:**

Rep. Dana Rohrabacher (R-Calif.) was the only Member to offer a continuity of Congress amendment before the Rules Committee, which determined it would not be in order as a substitute to the proposal of Rep. Brian Baird (D-Wash.) to amend the Constitution ("Baird Amendment Goes Down in Flames," June 3). Neither of the two other Democrats with amendment resolutions submitted them to the panel.