

Bill Would Speed Special Elections

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Roll Call

July 24, 2003

In an effort to speed reconstitution of the House in the event large numbers of Members were killed, the chairmen of the House Judiciary and Rules committees plan to introduce legislation today that would require the states to expedite special elections.

Judiciary Chairman James Sensenbrenner (R-Wis.) and Rules Chairman David Dreier (R-Calif.) - joined by Rep. Candice Miller (R), who previously served as Michigan's secretary of state - plan to put forward a proposal to deal with empty seats that is "pursuant to existing constitutional authority," according to a statement.

The Continuity in Representation Act would provide for the expedited special election of new Members to fill seats left vacant in "extraordinary circumstances," defined as when the Speaker announces there are more than 100 empty seats. Within 14 days after such a determination, the political parties of states with House vacancies may each nominate one candidate to run in a special election to be held within 21 days of the Speaker's decision.

The proposal comes amid increasingly intense discussion on the Hill about continuity of government, including whether a constitutional amendment is necessary to guarantee a functioning House.

Senate Judiciary Chairman Orrin Hatch (R-Utah) is drafting language for such an amendment, and hearings are

planned for the fall.

An independent commission put together by the American Enterprise Institute and the Brookings Institution released a report in June recommending a constitutional amendment allowing the temporary appointment of House Members as the only way to deal with what it viewed as an intractable problem:

The 17th Amendment gives state governors appointment power if a Senator dies (it doesn't address the issue of incapacitation, however). But as the Constitution is written, if large numbers of House Members were killed or incapacitated, the body could be without a quorum - or even nonexistent - until special elections are held. It currently takes the states an average of 126 days to hold special elections, according to the Continuity of Government Commission, which was chaired by former Sen. Alan Simpson (R-Wyo.) and former presidential adviser Lloyd Cutler.

Executive Director John Fortier said the commission is "supportive of all the states revising their laws for holding special elections." Even with a constitutional amendment that would allow for temporary House appointments, he said, the House should comprise duly elected Members as soon as possible.

"It's a good thing as far as it goes," Fortier added. "It's not really a solution to the problem, but it is helpful along the margins."

In addition, the commission found "it's difficult to speed up elections too much," Fortier said. Eliminating the primary process, which the Sensenbrenner-

Dreier-Miller legislation seeks to do, would hasten the process, but condensing a special election to 21 days seems near impossible to the commission.

"At the end of the day, we've estimated that it would be very hard to have an election in less than two months under these circumstances" because of insufficient infrastructure to print the ballots, among other things, Fortier said. And "the shortened election limits you to people that are extremely well known or are extremely well funded. You don't have by any means a perfect election."

Groups that oppose the constitutional amendment, however, believe fervently that an imperfect election is better than no election at all.

The Coalition to Preserve an Elected Congress, which was formed shortly before the Continuity of Government Commission released its report, opposes allowing nonelected Members to serve in the House. The group comprises nine prominent conservatives and is chaired by Phyllis Schlafly.

Notre Dame Law School professor and constitutional scholar Charles Rice, a member of the group, spoke to more than 40 Hill aides Wednesday on behalf of another organization that opposes a constitutional amendment.

The Liberty Committee, a political action committee created four years ago by Rep. Ron Paul (R-Texas), hosted a lunch briefing for staffers on the issue of continuity. Paul, Rep. Vic Snyder (D-Ark.) and Rice spoke against altering more than two centuries of direct

election to the House.

"If it's done, it should be done very carefully. A careless approach is even more dangerous" than the alternative, Paul said.

Snyder noted that the Senate has passed such constitutional amendments in the past, but they have never passed the House.

"I applaud the [commission] for their work on the issue, I just disagree with their conclusion," Snyder said. "The Framers were very clear about this. The Senate and the House were treated differently by the Framers."

Rice conceded that the issue is "a legitimate problem. I am not throwing rocks at the commission."

He added, however, that "when you're amending the Constitution, the burden of proof has to be very heavy on those who would do it," and direct election to the House "is not negotiable in my opinion."

Congress, Rice said, has a lot more power already vested in it by the Constitution than has been exercised. Article I, Section 4 gives Congress the ability to alter the "times, places and manner of holding elections."

"The House can do things with its rules that it hasn't even tried yet. What I would suggest is that's where we ought to be doing our thinking," Rice said.

The rules package passed by the House at the beginning of the 108th Congress included three changes to help the chamber function in the event of a terrorist attack.

The rules permit the Speaker to: designate a list of Members who could temporarily take over that leadership role in the event of the Speaker's death; recess the chamber at any time if there were an imminent threat; and adjust the total number of Members in the House.

Snyder used an example from his own experience to convince aides that Members could deal with their own incapacitation without an amendment. While undergoing heart surgery recently, he gave full power of attorney to a trusted associate, which would have allowed that individual to resign his seat if he was to be incapable of returning to the House.

Creative ways, Snyder and Rice insisted, can eliminate the need to amend the Constitution.

"Let's not go for the ultimate remedy," Rice said. "Let's try to solve this problem in a subconstitutional way."

An amendment, Rice said, would "for the first time in our history ... abandon this [idea] that there's a 'people's House.' The first break in that is the end of it. I think it's important that representative government be elected government. It's a big deal. It's embodied no where else."